

**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,	)	
	)	
<u>Defendant.</u>	)	
	)	
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,	)	
	)	
<u>Defendant.</u>	)	

**UNITED'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: CLAIM Y-8**

## INTRODUCTION

Claim Y-8<sup>1</sup> relates to sales of water at the United Shopping Center from the period April 1, 2004 to February 28, 2015, just before the Plaza Extra East store ceased being operated by the partnership under the Court's Wind Up Plan and Order. The water sold to third parties (including water delivery services) during that period was pumped from a cistern underneath the shopping center that was fed by two wells on shopping center property. The water collection and pumping infrastructure is indisputably part of the United Shopping Center that is owned by United Corporation ("United"), which can only mean that the water and proceeds from its sale belong to United.

Like the rent for the period 1994 to 2004 that Judge Brady found to be owed by the partnership to United, the partnership also owes United for water sales revenues it collected. Judge Brady granted United summary judgment on the 1994 – 2004 rent claim,<sup>2</sup> and the Master should grant United partial summary judgment on its water sales claim for April 1, 2004 to February 28, 2015, while reserving for later determination the amount of damages to which United is entitled.

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<sup>1</sup> The identification of United Corporation's water revenues claim as "Y-8" is a convention that was adopted by Hamed as a convenience. It denotes the same claim set forth in "Yusuf's Accounting Claims and Proposed Distribution Plan" (the "Original Claim") filed on September 30, 2016 (*see* Section III(F) at p. 9), and "Yusuf's Amended Accounting Claims Limited to Transactions Occurring On Or After September 17, 2006" (the "Amended Claim") (*see* Section III(F) at p. 12).

<sup>2</sup> Judge Brady's April 29, 2015 Opinion and Order granted summary judgment on United's rent claim for the 1994-2004 time period in the amount of \$3,999,679.33, and also granted summary judgment for the period January 1, 2012 to the date Yusuf assumed sole operation of the Plaza Extra East store at the rate of \$58,791.38 per month. *See Exhibit 1*, April 27, 2015 Opinion and Order Awarding Summary Judgment re: Rent, pp. 11-12.

## STATEMENT OF FACTS

The land and the improvements that make up the United Shopping Center are owned in fee simple by United, not the partnership. *See* Exhibit 1, Judge Brady’s April 27, 2015 Opinion and Order Granting Motion for Summary Judgment re: Rent, p. 12. The shopping center was built in 1986, destroyed by fire in 1992, and then rebuilt and reopened in May 1994. *See* **Exhibit 2**, June 6, 2014 Declaration of Fathi Yusuf, ¶¶ 1, 2. The shopping center was originally built with several cisterns, including one that was located underneath the portion of Bay 1 that Plaza Extra used for its pharmacy department (the “pre-existing cistern”) and that was fed by wells. *See* **Exhibit 3**, January 22, 2020 Deposition, p. 96-97, 117 (testimony of Mike Yusuf). When the store was rebuilt, two new cisterns were built on an adjacent piece of property purchased by United, and they were fed only by roof water from the shopping center. *See id.* at 97-98; *see also id.* at 34-35 (testimony of Fathi Yusuf). United used those new cisterns to provide water to the Plaza Extra store. *See id.* at 96-97, 114 (testimony of Mike Yusuf). Having them gave United more water capacity than it needed to service Plaza Extra and the other shopping center tenants, and enabled United to begin selling water to third parties. *See id.* at 34 (testimony of Fathi Yusuf). To that end, upon reopening the store in 1994, United installed a pipe stand that pumped water from the pre-existing cistern into customers’ truck tanks. *See id.* at 91-92 (testimony of Mike Yusuf); *see also id.* at 29-30 (testimony of Fathi Yusuf).

The procedure for making payment for water sales varied, depending on the customer. Those business owners who drove their own trucks might pay by cash, while owners whose employees drove their trucks would usually pay by check. Some customers paid in advance for multiple water fill-ups, while others were billed after fill-ups. *See* Exhibit 3, pp. 29-30 (testimony of Fathi Yusuf). Mike Yusuf was the person responsible for collecting and recording, on a daily

basis, the dollar amount of all water sales from 1994 to 1998, at which time Mufeed Hamed took over that function. *See id.* at 102-104, 105-106 (testimony of Mike Yusuf), pp. 122-123 (testimony of Mufeed Hamed). Yusuf Yusuf began working at the Plaza Extra East store in September 2000, but Waleed Hamed, who managed that store, and Mufeed Hamed, continued to have responsibility for recording water sales. *See Exhibit 3*, pp. 139, 142-143, 148.

The water and revenues from its sale belonged to United, but Yusuf told Hamed that for the 10 year period beginning in 1994, he would give Hamed one half of the water sales revenues, with the proviso that each of them would disburse half of those funds to their respective relatives in the Middle East who were in need of money. *See id.* at 7-8, 10 (testimony of Fathi Yusuf). That gift to Hamed's family was not in perpetuity, but was to end in 2004. *See id.* at 20 (testimony of Fathi Yusuf). And in fact there has been no gifting of water revenues to Hamed and his relatives in the 2004 to 2015 time period.

The fact that the water collected by United Shopping Center wells and its roof and stored in cisterns belonged to United is confirmed by how the partnership was charged for its own use of water at the Plaza Extra store. Beginning in 2004, a new rental formula was put into place under which the rent at Plaza Extra East was no longer calculated on a per square foot charge, but was instead calculated on the basis of the rent being paid by the Plaza Extra Tutu Park store in St. Thomas to the landlord at the Tutu Park Mall. The total rent paid by Plaza Extra Tutu Park was divided by gross sales for that store, and that percentage was applied to Plaza Extra East gross sales to determine the rent. *See Exhibit 4*, August 12, 2014 Declaration of Fathi Yusuf p. 6, ¶10 and Exhibit A to declaration; *see also Exhibit 5*, September 5, 2013 Declaration of Fathi Yusuf, pp. 1-2, ¶6, and Exhibit C to declaration. The Exhibit A and Exhibit C attachments to the Yusuf declarations show that the rent charged to the Plaza Extra Tutu Park store includes a separate

charge for water used by the store. This means that the formula for computing Plaza Extra East's rent from 2004 includes charges for water usage. *See* Exhibits A and C attached to Exhibits 4 and 5; *see also* Exhibit 3, pp. 15-17 (testimony of Fathi Yusuf).

In fact, in February 2012 the partnership did pay rent to United for the period January 1, 2004 to December 31, 2011 according to the formula attached to Exhibits 4 and 5, as Judge Brady found in his April 27, 2015 Opinion and Order. *See* Exhibit 1, p. 2. Judge Brady found, consistent with Mr. Yusuf's September 5, 2013 declaration and the exhibits attached to it, that the monthly rent amount was \$58,791.38. *See* Exhibit 1, p. 2. Judge Brady further found that "[t]he proof before the Court is clear as to United's claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month, for January 1, 2012 to September 2013, when United's Motion was filed." Exhibit 1, p. 11. He ordered that amount paid, "plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until Yusuf assumed possession and control of Plaza Extra-East." Exhibit 1, pp. 11. Inasmuch as Judge Brady found that the "proof is clear" that the partnership was obligated to pay United under the rent formula attached to Mr. Yusuf's September 5, 2013 declaration (and also attached to his September 12, 2014 declaration), and since under that formula the partnership is clearly being charged for water, any claim by Hamed that the water collected and stored in United Shopping Center cisterns was owned by the partnership rather than United would be legally and logically untenable.

## **ARGUMENT**

### **I. The Master Should Grant Partial Summary Judgment to United on Claim Y-8.**

Since the partnership collected the proceeds of United's sales of water to third party customers, United's claim for those water revenues is in the nature of a claim for restitution, unjust enrichment, or conversion. The elements of an unjust enrichment claim in the Virgin Islands are:

“(1) that the defendant was enriched, (2) that such enrichment was at the plaintiff's expense, (3) that the defendant had appreciation or knowledge of the benefit, and (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff.” *Walters v. Walters*, 60 V.I. 768, 779-780 (V.I. 2014). Likewise, there are three elements to a claim for restitution, or “quasi-contract,” in the Virgin Islands: “(1) a party must confer benefits on another party; (2) there must be an appreciation of the benefits by the recipient; and (3) there must be an acceptance and retention of these benefits in such circumstances that it would be inequitable for the recipient to retain the benefits without payment of value.” *Native Son, Inc. v. OME Sales, LLC*, 2016 WL 1048960, \*5 (D. V.I. 21016) (citation and internal marks omitted). And, finally, “[t]he elements of conversion require that a defendant be proved to have ‘intentionally or wrongfully exercise[d] acts of ownership, control or dominion over personal property to which he has no right of possession at the time.’” *Ross v. Hodge*, 58 V.I. 292, 308 (V.I. 2013) (citation and internal marks omitted).

The elements of each of these causes of action are readily established here, since the partnership has received the dollar benefit of water sales, Hamed will not permit the partnership to voluntarily relinquish that benefit in response to United’s claim, and it is inequitable for the partnership to retain it. While Hamed believes United’s claim amount for Y-8 is overstated, he does not deny that there were water sales for the period in which they are being sought. *See* Exhibit 3, pp. 57-58 (testimony of Waleed Hamed). Liability under any of these three theories is therefore clear.

The Virgin Islands Supreme Court has stated, a party “is not required to establish her damages to an exactitude,” and need only “prove her damages with as much certainty as the nature of the tort and circumstances permit.” *Maso v. Morales*, 57 V.I. 627, 635-636 (2012). (citing to

RESTATEMENT (SECOND) OF TORTS § 912). All that is required is that the plaintiff adduce evidence that “lay[s] a foundation which will enable the trier to make a fair and reasonable estimate” of damages. *Id.* at 636 (citation and internal marks omitted).

United quantification of Claim Y-8 is based on ledger pages it found for two prior years (1997 and 1998). The water sales for 1997 were \$52,000 and for 1998 (\$75,000). *See* Exhibit 6, sworn response to Interrogatory No. 2. For those 24 months, that works out to an average water sales amount of \$5,291.66 per month. *See id.* Using that monthly average for the 131 months comprising the period April 1, 2004 to February 28, 2015 yields \$693,207.46. *See id.*

Even though the United’s methodology for computing damages would be sufficient for a damage award under the *Maso* standard (in the absence of any other documentary evidence) after an evidentiary hearing, it may not be sufficient for summary judgment. The FBI hard drive contains hundreds of thousands of pages of documents that is scanned haphazardly in ways that do not reflect how files were actually maintained by United, which makes document searches the proverbial looking for a needle in the haystack. United will once again conduct searches in the hard drive and in other files to attempt to refine its damage computation for Claim Y-8, and will promptly produce to Hamed any documents it finds. United is accordingly only seeking summary judgment as to liability, not damages, as to Y-8 at this time.

## **II. United’s Statement of Undisputed Material Facts**

1. The land and the improvements that make up the United Shopping Center are owned in fee simple by United, not the partnership. *See Exhibit 1*, Judge Brady’s April 27, 2015 Opinion and Order Granting Motion for Summary Judgment re: Rent, p. 12.

2. The United Shopping Center was built in 1986, destroyed by fire in 1992, and then rebuilt and reopened in May 1994. *See Exhibit 2*, June 6, 2014 Declaration of Fathi Yusuf, ¶¶ 1,

3. The United Shopping Center was originally built with several cisterns, including one that was located underneath the portion of Bay 1 that Plaza Extra used for its pharmacy department (the “pre-existing cistern”) and that was fed by wells. *See Exhibit 3*, January 22, 2020 Deposition, p. 96-97, 117 (testimony of Mike Yusuf).

4. When the store was rebuilt, two new cisterns were built on an adjacent piece of property purchased by United, and they were fed only by roof water from the shopping center. *See id.* at 97-98; *see also id.* at 34-35 (testimony of Fathi Yusuf).

5. United used those new cisterns to provide water to the Plaza Extra store. *See id.* at 96-97, 114 (testimony of Mike Yusuf).

6. The addition of two new cisterns at the United Shopping Center gave United more water capacity than it needed to service Plaza Extra and its other shopping center tenants, and enabled United to begin selling water to third parties. *See id.* at 34 (testimony of Fathi Yusuf).

7. In order to facilitate sales of water to third parties, upon reopening the store in 1994 United installed a pipe stand that pumped water from the pre-existing cistern into customers’ truck tanks. *See id.* at 91-92 (testimony of Mike Yusuf); *see also id.* at 29-30 (testimony of Fathi Yusuf).

8. The procedure for making payment for water sales varied, depending on the customer. Those business owners who drove their own trucks might pay by cash, while owners whose employees drove their trucks would usually pay by check. Some customers paid in advance for multiple water fill-ups, while others were billed afterwards for fill-ups. *See Exhibit 3*, pp. 29-30 (testimony of Fathi Yusuf).

9. Mike Yusuf was the person responsible for collecting and recording, on a daily basis, the dollar amount of all water sales from 1994 to 1998, at which time Mufeed Hamed took



over that function. *See id.* at 102-104, 105-106 (testimony of Mike Yusuf), pp. 122-123 (testimony of Mufeed Hamed).

10. Yusuf Yusuf began working at the Plaza Extra East store in September 2000, but Waleed Hamed, who managed the store, and Mufeed Hamed, continued to have responsibility for recording water sales. *See Exhibit 3*, pp. 139, 142-143, 148.

11. The water and revenues from its sale belonged to United, but Yusuf told Hamed that for the 10 year period beginning in 1994, he would give Hamed one half of the water sales revenues, with the proviso that each of them would disburse half of those funds to their respective relatives in the Middle East who were in need of money. *See id.* at 7-8, 10 (testimony of Fathi Yusuf). That gift to Hamed's family was not in perpetuity, but was to end in 2004, and there has been no such gifting since at least 2004. *See id.* at 20, 61.

12. Beginning in 2004, a new rental formula was put into place under which the rent at Plaza Extra East was no longer calculated on a per square foot charge, but was instead calculated on the basis of the rent being paid by the Plaza Extra Tutu Park store in St. Thomas to the landlord at the Tutu Park Mall. The total rent paid by Plaza Extra Tutu Park was divided by gross sales for that store, and that percentage was applied to Plaza Extra East gross sales to determine the rent. *See Exhibit 4*, August 12, 2014 Declaration of Fathi Yusuf p. 6, ¶10 and Exhibit A to declaration; *see also Exhibit 5*, September 5, 2013 Declaration of Fathi Yusuf, pp. 1-2, ¶6, and Exhibit C to declaration.

13. Because the rent charged to the Plaza Extra Tutu Park store includes a separate charge for water used by the store, *see Exhibit A to Exhibit 4* (same as Exhibit C to Exhibit 5), the formula for computing Plaza Extra East's rent from 2004 includes charges for water usage. *See id.*; *Exhibit 3*, pp. 15-17 (testimony of Fathi Yusuf).

14. In February 2012 the partnership paid rent to United for the period January 1, 2004 to December 31, 2011, according to the formula attached to Exhibits 4 and 5, as Judge Brady found in his April 27, 2015 Opinion and Order. *See* Exhibit 1, p. 2.

15. Judge Brady has found, consistent with Mr. Yusuf's September 5, 2013 declaration and the exhibits attached to it, that the monthly rent amount under the formula was \$58,791.38. *See* Exhibit 1, p. 2. Judge Brady further found that "[t]he proof before the Court is clear as to United's claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month, for January 1, 2012 to September 30, 2013, when United's Motion was filed." *See id.* at p. 11.

16. On the basis of his findings that are quoted in the preceding paragraph, Judge Brady ordered \$58,791.38 paid for the period January 1, 2004 to September 5, 2013, "plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until Yusuf assumed possession and control of Plaza Extra-East." Exhibit 1, pp. 11.

17. Handwritten records found by Mr. Yusuf show that United's water sales for 1997 were \$52,000 and for 1998 (\$75,000). *See* Exhibit 6, May 16, 2018 sworn response to Hamed's Interrogatory No. 2; Exhibit 3, pp. 21, 24.

18. While Hamed believes that water sales declined after 2000 or 2001, he concedes that sales continued after those years. *See* Exhibit 3, pp. 57-58 (testimony of Waleed Hamed).

### **CONCLUSION AND RELIEF REQUESTED**

For all of the foregoing reasons, United respectfully requests that the Master award it partial summary judgment on Claim Y-8 and find that United is entitled to judgment on this claim in an amount to be determined later.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** April 17, 2020

By: /s/Charlotte K. Perrell

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Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of April, 2020, I caused the foregoing **United's Motion for Partial Summary Judgment as to Y-8** which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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/s/Charlotte K. Perrell

## INDEX OF EXHIBITS

- Exhibit 1-** Judge Brady's April 27, 2015 Opinion and Order Granting Motion for Summary Judgment re: Rent
- Exhibit 2-** June 6, 2014 Declaration of Fathi Yusuf
- Exhibit 3-** January 22, 2020 Deposition Testimony
- Exhibit 4-** August 12, 2014 Declaration of Fathi Yusuf
- Exhibit 5-** September 5, 2013 Declaration of Fathi Yusuf
- Exhibit 6-** Sworn response to Interrogatory No. 2

# **EXHIBIT 1**

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent WALEED HAMED  
Plaintiff )  
Vs. )  
FATHI YUSUF and UNITED )  
CORPORATION, ET AL )  
Defendant )

CASE NO. SX-12-CV-370  
ACTION FOR: DAMAGES; ET AL

NOTICE  
OF  
ENTRY OF JUDGMENT/ORDER

TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire  
NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire  
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire

HON. EDGAR ROSS (edgarrossjudge@hotmail.com)  
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT  
LAW CLERKS; LAW LIBRARY; IT; RECORD BOOK

Please take notice that on APRIL 27, 2015 Memorandum Order was  
entered by this Court in the above-entitled matter.

Dated: April 27, 2015

ESTRELLA H. GEORGE (ACTING)

Clerk of the Superior Court



By: IRIS D. CINTRON  
COURT CLERK II

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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATON, )  
Defendants/Counterclaimants )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )  
Counterclaim Defendants. )

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CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER is before the Court on Defendant United Corporation’s Motion to Withdraw Rent and Memorandum of Law in Support of United’s Motion (“Motion”), filed September 9, 2013; Plaintiff’s Response, filed September 16, 2013; United’s Reply, filed September 27, 2013; Plaintiff’s Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants’ Counterclaim Damages Prior to September 16, 2006 (Plaintiff’s “Summary Judgment Motion”), filed May 13, 2014; and Defendant’s Brief in Opposition (“Opposition”), filed June 6, 2014. For the reasons that follow, United’s Motion will be granted and Plaintiff’s Summary Judgment Motion will be denied, in part.



## FACTUAL BACKGROUND

In its instant Motion, United seeks allegedly past due rents for Bay No. 1 of United Shopping Plaza, defined therein as “69,680 Sq. Ft. Retail Space...,” “utilized for the day to day operations of Plaza Extra East Store located at 4C and 4D Estate Sion Farm, St. Croix, Virgin Islands.” Motion, 1-2.<sup>1</sup> Since 1986 this retail space has been leased by United to the Hamed-Yusuf Partnership (“Partnership”). According to United, and supported by the Affidavit of Defendant Yusuf, the Partnership has paid rent to United for leasing that space while operating Plaza Extra - East. Between 1986 and 1993, the parties settled rents following a request made by United. Motion, 3. Additionally, between 2004 and 2011, after United requested a rent payment for those years, the Partnership authorized payment to United for \$5,408,806. Motion, 7 (Yusuf Affidavit, ¶7 and Exhibit B).

However, according to United, the Partnership owes United substantial unpaid rents from 1994-2004 and from January 1, 2012 - September 30, 2013. As a result of the injunction, entered in April 2013, Yusuf, a United shareholder, is unable to unilaterally withdraw money from the Partnership accounts for the purpose of paying rent or for any other reason. United requests the Court to allow United to withdraw rent in the amount of \$3,999,679.73 (for 1994-2004) and \$1,234,618.98 (for 2012-2013) for a total of \$5,234,298.71 from the Partnership’s account. Motion 1-2.

United argues that it was a common practice for the Partnership to make lump sum rent payments as opposed to monthly or even yearly payments. Motion, 3. United argues that it did not

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<sup>1</sup> Defendant United’s Counterclaim seeks back rent from Bays 1, 5 and 8 located in the same premises. However, for purposes of winding up the Partnership and because United’s Motion only seeks back rent for Bay No. 1, this Order addresses only Bay No. 1.

seek rental payments for 1994-2004 because certain relevant financial records, informally referred to as the “black book,” were seized by the FBI during the course of a criminal investigation. Motion, 7; Yusuf Affidavit, ¶8. As a result, United was unable to properly determine the amounts of past due Partnership rent and for that reason did not demand payments.

United explains in detail that the rent for Plaza Extra - East “is calculated based upon the 2012 sales of Plaza Extra -Tutu Park, St. Thomas store...” (Motion, 4). “The sales are divided by the square footage to arrive at a percentage amount. That percentage amount is multiplied by the sales of the Plaza Extra - East store located at 4C & 4D Estate Sion Farm, St. Croix.” Motion, 5. According to United, this formula has been agreed upon by United and the Partnership and “...was used to calculate the rent for the period of May 5<sup>th</sup>, 2004 through December 31<sup>st</sup>, 2011... the monthly rate of \$58,791.38 is what the current monthly rent is.” Yusuf Affidavit, ¶8; Exhibit C (Rent Calculations Sheet).

Plaintiff, in his Response, argues that Yusuf cites no procedural basis that would allow United, in its capacity as landlord, to withdraw rents from the Partnership’s accounts. Response, 1. Plaintiff further argues that United has issued rent notices for \$250,000.00 per month as opposed to the \$58,791.38 per month stated in Yusuf’s affidavit for rent allegedly due from January, 2012. Response, 4. Without disputing that some rent is due, Plaintiff disputes United’s calculations, pointing to discrepancies in the store’s square footage<sup>2</sup> and implying that the rent for Plaza Extra - Tutu and Plaza Extra - East should be identical. Response, 4-5.

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<sup>2</sup> Plaintiff argues that the square footage of Bay No. 1 is 67,498 sq. ft. as opposed to United’s claim of 69,280 sq. ft. Response, 4-5. United has consistently averred that Bay No. 1 is 69,680 sq. ft. The Court will accept the previously undisputed square footage of Bay No. 1 as 69,680 sq. ft. and will allow monetary adjustments based on deviations from this area measurement if more accurate assessments in the future reveal that this area measurement is inaccurate. This can be accomplished as part of the Liquidating Partner’s and Master’s responsibilities during the wind up process.

Plaintiff, in both his Response and Summary Judgment Motion, asserts a statute of limitations defense for the past rents (1994-2004). Plaintiff cites V.I. Code Ann Tit. 5, §31(3) which sets a six year statute of limitations for "...actions upon contract or liability, express or implied, excepting those mentioned in paragraph (1)(C) of this article." Response, 5-6; Plaintiff's Summary Judgment Motion, 2-3.

United responds to Plaintiff's statute of limitations argument by claiming that Yusuf and Plaintiff's authorized agent, Waleed Hamed, reached an oral agreement in early 2012 to have the Partnership pay the past due rent back to United. Opposition, 10-11. This oral agreement was allegedly breached by Plaintiff when his attorney sent United a letter dated May 22, 2013 claiming that no agreement on rent had ever been reached. Opposition, 11; Exhibit D. Yusuf, by his affidavit, asserts that an agreement was reached for past rent to be paid when the Partnership's "black book" was returned by the FBI and a proper calculation could be achieved. Yusuf Affidavit, ¶¶4-6. Only when Yusuf's son discovered that the FBI had returned the black book in early 2013, did United calculate the past rent and seek repayment from the Partnership.

Hamed has admitted that the Partnership owes United rent: "We pay rent...we owe Mr. Yusuf... I don't pay for half. Still we owe him some more." Exhibit E, Hamed Deposition, p. 86; 10-14. Through an interpreter, Hamed admitted that rent is controlled by Yusuf, that he does not object to paying rent and that Yusuf (on behalf of United) could charge rent and collect it. Exhibit E, Hamed deposition p. 119; 7-11. In fact, when Hamed was asked "...if rent was not paid from January 1, 1994 through May 4, 2004, would you agree that rent should be paid," Hamed responded, "It should be paid." Exhibit E, Hamed Deposition, p. 117; 21-25.

Yusuf claims that he alone had been in charge of calculating rent and had bound the Partnership to paying United rent. Opposition, 11; Exhibit B, Yusuf Deposition p. 86; 8-12. Yusuf specified that United would charge the Partnership rent at \$5.55 per square foot, “the same as the old one.” *Id.* Yusuf states that the rental terms, as discussed with Hamed, revived the previous arrangement which had begun in 1986 and extended the landlord-tenant relationship from January, 1994 through 2004, briefly discussing how rent is calculated for Plaza Extra - East based on the percentage of sales from the Plaza Extra - St. Thomas store. Yusuf Deposition p. 88; 4-9; p. 89; 19-22.

#### **DISCUSSION**

The Court will examine whether the Partnership owes United rents from 1994 to 2004 (past due rent) and from 2012 to 2013. This inquiry is limited to the issue of rents and does not extend to other relief sought by Defendants’ Counterclaim or to other aspects of Plaintiff’s Motion for Partial Summary Judgment beyond the issue of past due rents.

##### **1. The Court has the authority to order the Partnership to repay past due rent.**

Plaintiff argues that United has failed to cite a procedural justification for the Court to order the Partnership to pay past due rent to United. Response, 1.

Without a written partnership agreement, as is the case between Hamed and Yusuf, courts will look to the Uniform Partnership Act to determine a partnership’s property and its obligations to creditors (codified at 26 V.I.C. § 24; § 177, respectively). “The reason is that dissolution does not terminate or discharge pre-existing contracts between the partnership and its clients, and ex-partners who perform under such contracts do so as fiduciaries for the benefit of the dissolved partnership.” *Labrum & Doak v. Ashdale*, 227 B.R. 391, 409 (Bankr. E.D. Pa. 1998).

In connection with winding up the Partnership, the Court has made several discretionary decisions regarding asset allocation in accordance with the Uniform Partnership Act and for the benefit of the partners. *See* Final Wind Up Plan, entered January 9, 2015. As the parties move forward with the wind up process, it is necessary to determine what constitutes Partnership property. Most of this determination can and should be done without judicial intervention but, in the case of past rents, Hamed cannot agree with Partnership creditor United, or with Yusuf, a United shareholder and Hamed's equal partner in the Partnership, as to the amount of rent that the Partnership owes United.

The Virgin Islands Supreme Court, in denying Defendants' appeal of this Court's Wind Up Plan, stated that "...matters that fall within the administration of winding up the partnership, over which the Superior Court possesses considerable discretion... are not immediately appealable." *Yusuf v. Hamed*, 2015 V.I. Supreme LEXIS 6, at \*5-6 (V.I. February 27, 2015)(citing *Belleair Hotel Co. v. Mabry*, 109 F.2d 390, 391 (5th Cir. 1940); *see also United States v. Antiques Ltd. P'Ship*, 760 F.3d 668, 671-72 (7th Cir. 2014)).

Appellate courts, when treating a lower court's supervision over a wind up process as similar to a receivership, "...have recognized 'the scores of discretionary administrative orders a [trial] court must make in supervising its receiver.'" *Hamed*, 2015 V.I. Supreme LEXIS 6, at \*6 (quoting *S.E.C. v. Olins*, 541 Fed. Appx. 48, 51 (2d Cir. 2013) (quoting *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1020 (2d Cir. 1975)).

With the aim of winding up the Partnership in a fair and efficient manner, the Court in this Order exercises its "considerable discretion" to determine how much rent the Partnership owes to United as a debt due and owing under the Uniform Partnership Act.

**2. The statute of limitations does not bar Defendant United's claim for rent and United is entitled to past due rent in the amount of \$3,999,679.73 for 1994-2004.**

Plaintiff argues that the Partnership is not responsible for rent from 1994-2004 because the six year statute of limitations for actions in debt expired in 2010, two years before the filing of his original Complaint in this action. Defendant United argues that the parties entered into an oral contract in 2012 that bound the Partnership to pay the past due rents as soon as a proper accounting could be done (i.e. the black book was recovered). When the black book was located in early 2013 and United made a subsequent demand for past rent, Plaintiff claimed that "there was never an understanding that rent would be paid for this time period..." and even if there had been, the statute of limitations had expired (preventing all claims for rents that came due prior to September, 2006). Motion, Exhibit D. According to Defendant United, the Partnership reneging on the agreement to pay back rents constituted a breach of contract which carries a six year statute of limitations that has yet to expire.

The Court views this matter somewhat differently. While 5 V.I.C. § 31(3) sets a six year statute of limitations for contractual liabilities such as payment of rents, there are certain equitable principles which operate to toll a statute of limitations. The "acknowledgment of the debt" doctrine (also known as the "revival of the promise to pay" doctrine) is recognized as follows:

A debt which is time-barred may be "revived" by an acknowledgment by the debtor. 'It has long been recognized that the expiration of the statutory period does not bar the claim if the plaintiff can prove an acknowledgment, a new promise, or part payment made by the defendant either before or after the statute has run. . . . Such conduct revives the cause of action so that the statute starts to run again for the full statutory period.'

*Gee v. CBS, Inc.*, 471 F. Supp. 600, 663 (E.D. Pa. 1979)(quoting *Developments in the Law Statutes of Limitations*, 63 Harvard L.Rev. 1177, 1254 (1950)).

Most courts only apply the acknowledgment of the debt doctrine when there exists “a clear, distinct, or unequivocal acknowledgment of the debt... [which] is sufficient to take the case out of the operation of the statute. It must be an admission consistent with a promise to pay. If so, the law will imply the promise, without its having been actually or expressly made. There must not be uncertainty as to the particular debt to which the admission applies.” *CBS, Inc.* 471 Supp. at 664 (citing *In re Nicolazzo's Estate*, 414 Pa. 186, 190, 199 A.2d 455, 458 (1964), quoting *Palmer v. Gillespie*, 95 Pa. 340 (1880)).

Courts have employed a second equitable principle when tolling a statute of limitations, referred to as the “payment on account doctrine.” Similar to the acknowledgment of the debt doctrine, the payment on account doctrine “... is regarded as an acknowledgment of liability.” *Basciano v. L&R Auto Parks, Inc.*, 2012 U.S. Dist. LEXIS 17750, \*36-39 (E.D. Pa. February 10, 2012)(citing *Quaker City Chocolate & Confectionery Co. v. Delhi-Warnock Bldg. Ass'n*, 53 A.2d 597, 600 (Pa. 1947)(“There can be no more clear and unequivocal acknowledgment of debt than actual payment.”)). To toll the statute of limitations, a partial payment “must constitute a constructive acknowledgment of the debt from which a promise to pay the balance may be inferred.” *GE Med. Sys. v. Silverman*, 1998 U.S. Dist. LEXIS 886, \* 20-21 (E.D. Pa. Feb. 2, 1998)(quoting *City of Philadelphia v. Holmes Electric Protective Co.*, 335 Pa. 273, 6 A.2d 884, 888 (Pa. 1939)). See also *Quaker City Chocolate & Confectionery Co.*, 53 A.2d at 600 (“Ordinarily, a payment on account of a debt is regarded as an acknowledgment of liability

and of willingness to pay the balance due thereon and therefore is held to interrupt the operation of the statute").<sup>3</sup>

In this case, both the acknowledgment of the debt doctrine and the payment on account doctrine apply to toll the statute of limitations on United's rent claims.

Regarding the acknowledgment of the debt, United has proven with sufficient certainty that the Partnership owes United rent from 1994 to 2004. Notwithstanding Plaintiff's denial that the parties had an agreement regarding past rents, Yusuf, by his affidavit, swears that Waleed Hamed entered into an agreement to pay United past due rent once the black book was recovered in early 2013. Opposition, 10-11; Exhibit D, Yusuf Affidavit, ¶¶4-6. Yusuf specifically addresses how rent is calculated (\$5.55 per square foot), stating that the past due rent is "the same as the old one," referring to the 1986-1994 rental amounts. Yusuf Deposition p. 86; 8-12. Yusuf presents more than sufficient evidence that the Partnership's arrangement with United from 1986 to 1994 was identical, in terms of past due rent, as the arrangement between 1994 through 2004.

Nothing presented by Hamed calls into questions the validity of this debt or the application of the acknowledgment of the debt doctrine. Hamed has admitted on several occasions that Yusuf is in charge of rent, that the Partnership owes United rent for January 1, 1994 through May 4, 2004, and that the rent for this period should be paid to United. Opposition, Exhibit E, Hamed Deposition, p. 117-119. It is clear that the Partnership, through the statements of both Hamed and Yusuf, has

---

<sup>3</sup> Courts will only allow "...a payment on a debt to qualify as an acknowledgment..." if there is an "unequivocal acknowledgment" of the debt, but have considered a debtor's payment on part of a debt to evidence an acknowledgment of the debt and therefore have tolled the statute of limitations. *See Basciano*, 2012 U.S. Dist. LEXIS 17750, at \*36. From the acknowledgment of the debt the law will infer a promise to pay the underlying debt. *Receiver of Anthracite Trust Co. v. Loughran*, 19 A.2d 61, 62 (Pa. 1941) (citing *Dick v. Daylight Garage*, 335 Pa. 224, 6 A.2d 823, 826 (Pa. 1939)).



acknowledged a debt for rents owed to United, which is determined to be in the amount of \$3,999,679.73 (based upon 69,680 sq. ft. @ \$5.55/sq. ft.) for the period January 1, 1994 to May 4, 2004.

Similarly, the payment on account doctrine acts as a bar to Plaintiff's statute of limitations defense. The Partnership's partial payments "...constitute a constructive acknowledgment of the debt from which a promise to pay the balance may be inferred." *GE Med. Sys.*, 1998 U.S. Dist. LEXIS 886, at \*20-21. For the period of the operation of Plaza Extra – East from 1986 through 2011, the Partnership made two lump sum rent payments to United (covering the periods from 1986-1994 and from 2004-2011). Motion, Yusuf Affidavit, ¶7; Exhibit B (previous rental check for \$5.4 million). United and Yusuf have explained in detail how rent is calculated and why United did not collect rent for the period in question due to the unavailability of their financial records. Motion, 4, 7; Yusuf Affidavit, ¶8.

Therefore, both the acknowledgment of the debt doctrine and the payment on account doctrine apply to the facts of the rent dispute between United and the Partnership. The six year statute of limitations for United's past rent claims was tolled as a result and began to run on May 22, 2013 when Hamed first disputed the validity of the 1994-2004 rent debt. Motion, Exhibit D. United is within the timeframe with which to bring this claim and has presented sufficient information, through affidavits, depositions, and other evidence in the record, for the Court to grant United's Motion as to that period and to direct the Partnership to pay United the sum of \$3,999,679.73.

**3. Defendant United is also entitled to rent from 2012 to 2013 in the amount of \$58,791.38 per month.**

Plaintiff does not argue that the Partnership is exempt from paying rent to United. “[I]t is undisputed that United is the landlord and Plaza Extra is the tenant at the Sion Farm location, for which rent is due since January of 2012.” Response, 1. Rather, Plaintiff claims that United itself has created a dispute regarding rents from January 2012 by issuing rent notices seeking increased rent in the amount of \$250,000.00 per month, rather than the \$58,791.38 per month set out in Yusuf’s affidavit. Response, 4. The proof before the Court is clear as to United’s claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month from January 1, 2012 to September 30, 2013, when United’s Motion was filed.<sup>4</sup>

As the fee simple owner and landlord of Bay No. 1 United Shopping Plaza, United is entitled to rents from the Partnership for its continued use of Bay No. 1 for the operations of Plaza Extra - East. Therefore, the Court will order the Partnership to pay United the sum of \$1,234,618.98 for rent from January 1, 2012 through September 30, 2013, Plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until the date that Yusuf assumed sole possession and control of Plaza extra – East.

On the basis of the foregoing, it is hereby

ORDERED that Defendant United Corporation’s Motion to Withdraw Rent is GRANTED, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay

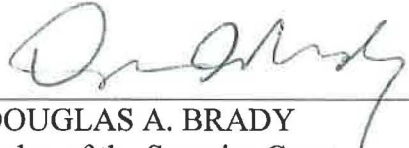
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<sup>4</sup> It is acknowledged that United delivered notices to the Partnership following the April 2013 Preliminary Injunction, seeking to collect an increased rent sum of \$250,000.00. United presents in its Motion and proofs no numerical or factual justification for such claims, which are not considered in this Order.

from the Partnership joint account for past rents due to United the total amount of \$5,234,298.71, plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra – East. It is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED, in part, as to Plaintiff's claims that the statute of limitations precludes Defendant United's claims for past due rent.

Dated: April 27, 2015

  
\_\_\_\_\_  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor  
4/27/15

CERTIFIED TO BE A TRUE COPY  
This 27<sup>th</sup> day of April 2015

CLERK OF THE COURT

By  Court Clerk 11

# **EXHIBIT 2**

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

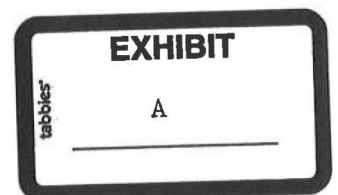
<p><b>MOHAMMAD HAMED, by his</b> ) <b>authorized agent WALEED HAMED,</b> )  )                                   <b>Plaintiff/Counterclaim Defendant,</b> )  )                                   <b>vs.</b> )  ) <b>FATHI YUSUF and UNITED CORPORATION,</b> )  )                                   <b>Defendants/Counterclaimants,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

I, Fathi Yusuf, pursuant to 28 USC §1746 and Super. Ct. R. 18, declare under the penalties of perjury, that:

1. Since the partnership that operates the Plaza Extra Stores was formed in 1986, it has obligated itself to make rent payments to United Corporation ("United") for the Plaza Extra-East store. I was the partner responsible for making all decisions regarding the timing, amount and payment of rent. As of December 31, 1993, all rent due from the partnership to United had been paid.

2. The Plaza Extra-East store was reopened in May 1994 after it had been destroyed by fire in 1992. The Plaza Extra-Tutu Park store had just opened in October 1993. Around the time that the Plaza Extra-East store reopened, I was arranging a Scotiabank loan to United



Corporation for approximately \$5,000,000 for the benefit of the partnership. The loan was guaranteed by my wife and I and it was secured by our home on St. Croix and by United's shopping center in St. Croix. In light of these circumstances, I determined that because United did not need the rent revenue, the rent would accrue and the monies that otherwise would be used to pay rent could serve as working capital for the partnership.

3. Some time in 2002 or 2003, I began discussions with Waleed Hamed regarding the rent that would be due for Plaza Extra-East after the expiration of the prior ten-year term in 2004. During those discussions, we recognized that the prior rent was far below fair market value, and the decision was made to base the rent on the same formula utilized at the Tutu Park store in St. Thomas. There is no dispute concerning the formula for calculating the rent for Plaza Extra-East from May 2004 forward, since rent based upon that agreed formula was paid on February 7, 2012 in the amount of \$5,408,806.74.

4. At the time we made the agreement regarding Plaza Extra-East rent for 2004 going forward, we were embroiled in the criminal case and all of the Plaza Extra accounts were frozen by an injunction. As a result, I made a decision and Waleed Hamed, on behalf of Mohammed Hamed, agreed, that there was no prospect for the payment of the rents owed for the 1994-2004 period. However, even if the ability to collect the rent was not blocked by the injunction, I was unable to calculate the rent for 1994-2004, as I did not have the "black book," a black ledger book containing accounting information concerning the Hamed and Yusuf families, as well as other information relating to the Plaza Extra Stores, including the payment of rent to United. The FBI had seized that book when it conducted its raid in October 2001. Among other

things, the “black book” reflected the date of the last rent payment in 1994, information I needed to accurately determine the rent for Plaza Extra-East from 1994–2004.

5. In the latter part of 2011 and early 2012, United was in a position to request – and the partnership was in a position to pay – rent for the 1994–2004 period, as the criminal matter had progressed to a point where there was a relaxing of the injunction. However, the original problem regarding the absence of the records to accurately calculate the rent for the 1994-2004 period remained unresolved because of the absence of the “black book.” I did not want to either understate or overstate the rent amount, but wanted the dollar amount of rent to be exactly correct.

6. In early 2012, I discussed the 1994-2004 rent with Waleed Hamed when the payment of \$5,408,806.74 in rent for the period from May 5, 2004 to December 31, 2011 was coordinated. I again explained to Waleed Hamed that I could not request the 1994–2004 rent, as we still had not received the “black book” to determine the exact starting point for that period. During that conversation in 2012, Waleed Hamed agreed that rent was owed for the 1994–2004 period, and agreed that it would be paid once the “black book” was recovered and a proper calculation could be made.

7. My son found the “black book” in early 2013, among a large number of documents that were returned to us by the FBI. After receipt of the “black book,” we asked Waleed Hamed for the rent for 1994–2004, as we then were able to properly calculate the dollar amount. On May 22, 2013, counsel for Mohammed Hamed wrote a letter to my counsel in which he advised that his client disputed there was any obligation to pay the 1994–2004 rent.

Until the litigation in this matter, nobody had ever disputed United's entitlement to rent for the 1994-2004 period.

8. I received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive in approximately mid-2011. When these documents were initially returned, I had no reason to suspect any wrongdoing by Plaintiff, Waleed Hamed or any other members of the Hamed family. In 2011, as I reviewed these documents, I discovered certain documents which led me to believe that Plaintiff and Waleed Hamed may have taken monies without my knowledge. In 2012, I discovered the tax returns for Waleed Hamed for various years which reflected more than \$7,500,000 in stocks and securities owned by Waleed Hamed. I knew what Waleed's salary as a Plaza Extra store manager was, and knew that he had no other employment or source of income. My belief was that there was no way he could have legitimately accumulated that much wealth.

Dated: June 6, 2014

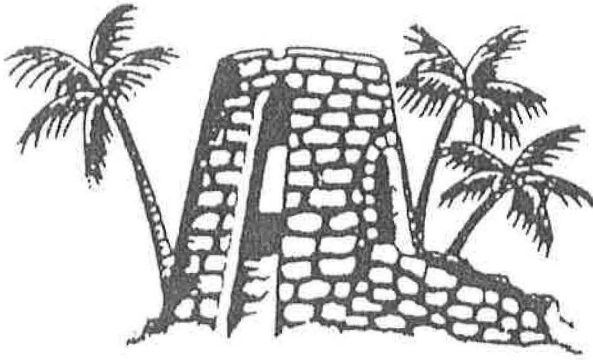


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Fathi Yusuf



# **EXHIBIT 3**



***Transcript Testimony of***

***Date: January 22, 2020***

***Volume:***

***Case: Waleed Hamed, et al v. Fathi Yusuf, et al***

Susan C. Nissman, RMR

Caribbean Scribes, Inc.

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

WALEED HAMED, as the Executor of )  
the Estate of MOHAMMAD HAMED, )  
Plaintiff/Counterclaim Deft., )

vs. )

Case No. SX-2012-CV-370

FATHI YUSUF and UNITED )  
CORPORATION, )  
Defendants/Counterclaimants, )

vs. )

DEPOSITIONS TAKEN  
JANUARY 22, 2020

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

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

vs. )

Consolidated with  
Case No. SX-2014-CV-287

UNITED CORPORATION, Defendant. )

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

vs. )

Consolidated with  
Case No. SX-2014-CV-278

FATHI YUSUF, Defendant. )

---

FATHI YUSUF, Plaintiff, )

vs. )

Consolidated with  
Case No. ST-17-CV-384

MOHAMMAD A. HAMD TRUST, et al., )  
Defendants. )

KAC357 Inc., Plaintiff, )

vs. )

Consolidated with  
Case No. ST-18-CV-219

HAMED/YUSUF PARTNERSHIP, )

Defendant. )

THE VIDEOTAPED ORAL DEPOSITIONS OF  
FATHI YUSUF, WALEED "WALLY" HAMED, MAHER "MIKE" YUSUF,  
MAFEED "MAFI" HAMED, AND YUSUF YUSUF  
was taken on the 22nd day of January, 2020, at the Law  
Offices of DNF, 1131 King Street, Suite 204, Christiansted,  
St. Croix, U.S. Virgin Islands, between the hours of  
10:15 a.m. and 3:57 p.m., pursuant to Notice and Federal  
Rules of Civil Procedure.

---

Reported by:

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

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 U.S. Virgin Islands 00820  
 By: Joel H. Holt  
 and

Carl J. Hartmann, III  
 5000 Estate Coakley Bay, L6  
 Christiansted, St. Croix  
 U.S. Virgin Islands 00820  
 By: Carl J. Hartmann, III  
 Kim Japinga

For the Defendants:

Law Offices of  
 DNF  
 Law House  
 P.O. Box 756  
 Charlotte Amalie, St. Thomas  
 U.S. Virgin Islands 00802  
 By: Charlotte Perrell

Also Present: Michael Gelardi, Videographer  
 Hisham "Shawn" Hamed

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Susan C. Nissman, RPR-RMR  
 (340) 773-8161

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Susan C. Nissman, RPR-RMR  
 (340) 773-8161

1 THE VIDEOGRAPHER: In the matter of Waleed  
 2 Hamed versus Fathi Yusuf and the United Corporation, in the  
 3 Superior Court of the Virgin Islands, Division of St. Croix,  
 4 Civil Action Number SX-2012-CV-370.

5 My name is Michael Gelardi. I am the  
 6 videographer for today's proceedings. Our court reporter is  
 7 Susan Nissman. Today's date is January 22nd, 2020. The  
 8 deponent is Fathi Yusuf. The time is 10:15.

9 For the purpose of voice identification, I am  
 10 requesting that the attorneys present identify themselves at  
 11 this time.

12 MS. PERRELL: Charlotte Perrell, on behalf of  
 13 United Corporation and Fathi Yusuf.

14 MR. HARTMANN: Carl Hartmann, for the Hameds.  
 15 And Joel Holt will be joining us during the proceeding.  
 16 He's out of the room for a moment, but I don't want to stop  
 17 the tape when he comes in and makes his appearance, so I'll  
 18 mention that he's appearing.

19 THE VIDEOGRAPHER: Okay. Please swear in the  
 20 witness.

21  
 22  
 23  
 24  
 25

1 St. Thomas; base rent, percentage rent, insurance. Maybe  
 2 not -- maybe the insurance, no, because that's the insurance  
 3 always. It -- everything go individual. Maintenance and  
 4 consumption of water.  
 5 He says, Are you going to charge me water? I  
 6 says, Yes. The agreement, whatever costs us in -- in  
 7 St. Thomas, we want to apply it to St. Croix to be fair.  
 8 Then he didn't even answer me back. And I bill him. I  
 9 think he have the record up to now. Water was included.  
 10 It's not -- it's a -- it's a matching, but water was costing  
 11 us about \$40,000 annually in the St. Thomas store. So most  
 12 likely, he bid \$40,000 for water annually for Plaza Extra  
 13 East.  
 14 Q. So let me just stop you right here.  
 15 So what you're saying is when you tagged the  
 16 rent that was to be paid by Plaza Extra East from 2004  
 17 through, I think you guys did a 10-year -- another  
 18 10-year --  
 19 A. No.  
 20 Q. Okay.  
 21 A. 1994 to 2004 --  
 22 Q. I know, but I'm talking --  
 23 A. -- is my commitment.  
 24 Q. I understand, but at 2004, the deal changed?  
 25 A. Right.

1 A. Yes, he knew.  
 2 Q. Because of this rent?  
 3 A. The bill can prove it. It's evidence.  
 4 Q. Okay. Now, that's the charge for consumption and  
 5 it's just a number that ties to what was done in St. Thomas,  
 6 right?  
 7 A. Right.  
 8 Q. It's not the actual consumption, because it was  
 9 just a way --  
 10 A. It's way it's matching --  
 11 Q. Right.  
 12 A. -- St. Thomas bill.  
 13 Q. Right. But it put Wally on notice that water is  
 14 no longer free?  
 15 A. He knows that. Whatever penny.  
 16 Q. Okay.  
 17 A. Whatever it costing me, you know.  
 18 Q. I understand.  
 19 A. Look in the dictionary, say what is the -- what is  
 20 the whatsoever. Whatever it cost in expenses to operate --  
 21 Q. Right.  
 22 A. -- in St. Thomas, he -- the St. Thomas --  
 23 St. Croix store obligated to match --  
 24 Q. Right.  
 25 A. -- for that location, without looking at the size.

1 Q. Right, that's what I'm talking about.  
 2 A. Exactly.  
 3 Q. So in 2004 when the deal changed and you -- you  
 4 connected or linked --  
 5 A. Yes.  
 6 Q. -- the rent for Plaza Extra East to, in essence,  
 7 what was happening in St. Thomas just to provide a base or a  
 8 means to calculate it, right?  
 9 A. The calculation is we have bill from Tutu Park  
 10 Mall.  
 11 Q. I understand.  
 12 What I'm saying is when that happened, when  
 13 it went from the prior arrangement to the new arrangement.  
 14 A. As of the first day after 2004 commitment.  
 15 Q. I understand.  
 16 So from that point, what I'm asking you is,  
 17 is water was being charged to the partnership for  
 18 consumption --  
 19 A. Yes.  
 20 Q. -- based the consumption that was used at --  
 21 A. In St. Thomas.  
 22 Q. -- in St. Thomas?  
 23 A. Yes.  
 24 Q. Okay. So your -- Wally was aware that water was  
 25 no longer free, in essence, to Plaza Extra East?

1 Q. Okay. So that -- that deals with the expense of  
 2 the water consumption.  
 3 A. Yes.  
 4 Q. Now, my question for you is --  
 5 A. Yes.  
 6 Q. -- I'm trying to get to the next part.  
 7 A. Sure.  
 8 Q. The next part is, how was there -- what was the  
 9 discussion, or was there a discussion, or what was the  
 10 arrangement for the water revenue, not the consumption,  
 11 which I understand you put them on notice, there's no --  
 12 it's not free anymore.  
 13 A. Yes.  
 14 Q. What was the arrangement for the revenue for the  
 15 water sales after 2004?  
 16 A. The -- the -- I didn't understand what you mean.  
 17 Q. So after 2000 --  
 18 A. You mean the revenue outside?  
 19 Q. The revenue that was coming from the sale of  
 20 water, what was the arrangement with Wally --  
 21 A. Um-hum.  
 22 Q. -- for how that would be -- how that would go?  
 23 How it would go to United? How -- how would you deal with  
 24 the revenue?  
 25 A. Naturally, it have to go to United.

1 Q. Okay. Did you discuss -- tell me how that  
 2 conversation went.  
 3 A. No, we did not discuss. I thought everything he  
 4 write it down.  
 5 Q. Okay.  
 6 A. And when we sit down and do our balance, he knew  
 7 that money get into Plaza and is not Plaza money, it's my  
 8 own money.  
 9 Q. Okay.  
 10 (Whereupon Attorney Holt enters room.)  
 11 Did you discuss with him how that money was  
 12 going to be put into the United accounts?  
 13 A. No, I did not discussed it, --  
 14 Q. Okay.  
 15 A. -- honestly.  
 16 Q. And at the time that these conversations were  
 17 happening, was it during the period that the FBI was  
 18 monitoring you, because this was in 2003 and '4?  
 19 A. Yeah, yeah.  
 20 Q. All right.  
 21 A. Well, we couldn't make any changes --  
 22 Q. Okay.  
 23 A. -- because of the FBI.  
 24 Q. Okay. All right.  
 25 A. But we have -- we have a -- a running balance,

1 what they consume, what I consume. How much rent he owes.  
 2 Whatever my duty is and his duty is. Whenever they -- we  
 3 want to consolidate our -- everybody have his right, we'll  
 4 go through what you owe me and what I owe you.  
 5 Q. Okay.  
 6 A. Now, the store was collecting the water, I'm  
 7 expecting to that water, above any other expense.  
 8 Q. Okay. All right.  
 9 A. He know the water was not free. If he was knew  
 10 that the water is free, why my commitment only to 2004?  
 11 Q. Right.  
 12 A. After 2004, I have the right to do whatever I want  
 13 with my water. It was never given to the partnership.  
 14 Q. Okay.  
 15 A. It was I did enough for the partnership.  
 16 Q. All right. So -- just a minute.  
 17 (Respite.)  
 18 MR. HARTMANN: Just for the record, during  
 19 the last question, Joel Holt entered the room. We entered  
 20 his appearance on the record earlier, but he's now  
 21 physically in attendance.  
 22 Q. (Ms. Perrell) All right. So Mr. Yusuf, you're  
 23 making a claim for the water revenue from 2004, April of  
 24 2004, forward, correct?  
 25 A. Yes.

1 Q. All right. Did you do a -- how did you determine,  
 2 or how do you calculate the amount of the water revenue for  
 3 that time?  
 4 A. I was looking to -- I looking for something. I  
 5 looking through records and I came across this. I says,  
 6 This water was Wally handwriting. It was in the book twice.  
 7 For 1 year, it was -- I honestly don't remember. It was 52  
 8 or 54. I know it's more than 50, and less than 60. But the  
 9 second numbers was absolutely 72. I remember it like in  
 10 front of my own eyes.  
 11 Q. Okay.  
 12 A. So what I did, how much month I'm looking for, and  
 13 I -- I calculate how many month. I divide it -- I add in  
 14 these two numbers together. I divide it in -- on 24 months,  
 15 or if I divide it -- if I divide it, come total and divide  
 16 in two and then it will be for 12 month. And then I  
 17 multiply that for how many months that Plaza Extra should  
 18 come up with that water money.  
 19 Q. Okay.  
 20 MR. HARTMANN: Just not to interrupt, I'm  
 21 just going to make a continuing objection on hearsay,  
 22 foundation, and best evidence.  
 23 Q. (Ms. Perrell) Okay. All right. Mr. Yusuf, this  
 24 document that you said you -- you looked at, can you  
 25 describe where you found this document?

1 A. I -- I don't know. I believe it was in one of the  
 2 books.  
 3 Q. Okay. At the Plaza Extra East store?  
 4 A. At the Plaza Extra East store, yes.  
 5 Q. Okay. And do you recall whether you provided that  
 6 document to the attorneys?  
 7 A. Yes.  
 8 Q. Okay. Do you recall when you would have done  
 9 that?  
 10 A. When there's a case between us and Hamed family.  
 11 Q. Okay. During the pendency of this lawsuit?  
 12 A. Yes.  
 13 Q. Okay. All right. And you -- was there anything  
 14 else written on this -- was it a ledger book or --  
 15 A. It was a ledger book, but it was -- water money  
 16 was on two separate pages and nothing else but one number  
 17 says, Water revenue, amount.  
 18 Q. Okay.  
 19 A. That's one page. Second page --  
 20 Q. Um-hum.  
 21 A. Maybe 4-5 page, because as he need it, he write  
 22 notes. The following year, he come up with the clear page  
 23 and he wrote again that -- that amount was 72,000. His  
 24 handwriting, not my handwriting.  
 25 Q. Okay. All right.

1 MR. HARTMANN: Excuse me, whose handwriting?  
 2 A. Wally handwriting, not my handwriting. Wally is  
 3 the man, the final man work in the store.  
 4 MR. HARTMANN: I'm sorry, I just couldn't  
 5 hear you. I'm sorry.  
 6 Q. (Ms. Perrell) Okay. Based on those two numbers  
 7 for those 2 years, you made the calculation?  
 8 A. Yes.  
 9 Q. Okay. And have you done that calculation in this  
 10 lawsuit and provided answers to the opposing side?  
 11 A. Yes, I think so.  
 12 Q. Okay. Let me hand you what we'll mark as -- I'm  
 13 just going to go out of order for a minute. It will be 13.  
 14 (Deposition Exhibit No. 13 was  
 15 marked for identification.)  
 16 (Respite.)  
 17 Hold on a second. I think some of these got  
 18 clipped together.  
 19 Carl, I was going to hand him -- and I don't  
 20 know where my third copy is.  
 21 MR. HARTMANN: That's okay.  
 22 MS. PERRELL: The discovery responses, the  
 23 original discovery responses from May 15th.  
 24 MR. HARTMANN: Okay. We don't need a copy.  
 25 MS. PERRELL: I'm just telling you what it

1 is.  
 2 MR. HARTMANN: No problem.  
 3 Q. (Ms. Perrell) Okay. So Mr. Yusuf, I'm handing you  
 4 what's been marked as Exhibit 13. And I'll represent to you  
 5 that these were discovery responses that had been submitted  
 6 in this case previously.  
 7 A. Um-hum.  
 8 Q. And there's some calculations here. And just want  
 9 you to just take a quick minute to read, and just, if you  
 10 have any changes to it, or if that number is -- is correct,  
 11 if you can please confirm.  
 12 A. I'm sure I went more than once through the  
 13 calculation and I find it, it's final.  
 14 Q. Okay. So these -- these numbers are correct?  
 15 A. Yes, it is.  
 16 Q. Okay. All right. And the calculation you  
 17 prepared there is the calculation you were just describing a  
 18 moment ago?  
 19 A. Based on these two item.  
 20 Q. Okay. All right. Do you have -- I know I asked  
 21 you this a minute ago --  
 22 A. Keep asking me. No problem.  
 23 Q. -- so I apologize. Apologize if I do it again.  
 24 A. No problem.  
 25 Q. Was there any point in time where you understood,

1 or heard, or just generally knew that the water that was  
 2 sold, the -- the amount of water that was sold, dropped or  
 3 diminished?  
 4 A. No. Before we split, I was never told, or I never  
 5 noticed anything drop. When I say I never noticed, because  
 6 nobody ever tell me.  
 7 Q. Okay.  
 8 A. I really don't go and look how much we sell water.  
 9 Q. Okay.  
 10 A. This is minor for me and them.  
 11 Q. Okay. All right. One of the statements that the  
 12 Hameds have stated in this case is that they believe that in  
 13 2000, around 2000, the water consumption dropped a lot  
 14 because they state that there were competitors such as  
 15 Marco's and others.  
 16 Do you have any information about the --  
 17 whether the water dropped off or not in the 2000s?  
 18 A. I was never told of any water drop off.  
 19 Q. Okay.  
 20 A. And the water is something beyond anybody control.  
 21 Three month ago, if I have 10 million -- 10 million gallon  
 22 of water, I would sell it.  
 23 Q. Um-hum.  
 24 A. They have WAPA, they couldn't deliver water to  
 25 the -- to the customers, and everybody turn to his well,

1 whatever, until everybody well end up dry, and then they  
 2 come to us, and we can't keep up with it. We just simply  
 3 can't keep up with it.  
 4 Q. Okay.  
 5 A. And we have five well running, and we have a  
 6 500,000 gallon cistern, and we can't keep up with it.  
 7 And -- and this is just about 3 or 4 months ago, not 3 or 4  
 8 years ago.  
 9 But we was -- we known, you could see from  
 10 the main road, there's a commercial water for sale for  
 11 trucks, 'cause you could see the -- the setup, and everybody  
 12 knows we have water to sell.  
 13 Now, by the way, for the past month or 2  
 14 month, I find it difficult to accept any trucks, because I  
 15 have too much machinery on the cistern, on the roadway. I  
 16 have backhoes. I have two, three trucks of ours. And, you  
 17 know, we have construction in Barren -- Barren Spot, and we  
 18 just don't want that water business no more.  
 19 Q. All right. Mr. Yusuf, one of the things that --  
 20 one of the issues that the Hamed family has raised during  
 21 the course of this case is that various agreements are not  
 22 in writing.  
 23 Isn't it true, Mr. Yusuf, that the -- the  
 24 entire partnership arrangement that you had was not in  
 25 writing with Mr. Hamed?



1 A. Nothing in writing whatsoever.  
 2 Q. Okay. All right.  
 3 A. Everything is visibly -- verbally. They have  
 4 leased as much as they can. I don't care. But any time I  
 5 find thieving, I will shut that door the same day. I can't  
 6 work with a thief.  
 7 Q. All right.  
 8 A. I just can't turn my back --  
 9 Q. All right.  
 10 A. -- and leave myself exposed. Enough is enough.  
 11 And, therefore, I decide to split. I understand the judge  
 12 says you's a partner. I don't need this partnership.  
 13 MS. PERRELL: All right. All right. All  
 14 right, Mr. Yusuf. I don't think I have any further  
 15 questions. You confirmed this number. We've talked about  
 16 everything else. I may come back and ask you a couple more  
 17 questions.  
 18 A. Sure. No problem.  
 19 MS. PERRELL: But Mr. Hartmann, go ahead.  
 20 (Deposition Exhibit No. 12 was  
 21 marked for identification.)  
 22 CROSS-EXAMINATION  
 23 BY MR. HARTMANN:  
 24 Q. Thank you.  
 25 Mr. Yusuf, if you'll look at the exhibit

1 that's marked Exhibit --  
 2 MS. JAPINGA: 12.  
 3 Q. (Mr. Hartmann) -- 12, that's a listing of the  
 4 months and years that your claim states. And if you'll  
 5 notice that the light pink color ends at 9-17-2006, which  
 6 was the bar date that Judge Brady imposed. And then the  
 7 rest of the chart, the darker pink runs from that date going  
 8 into the time when the stores were actually split up.  
 9 Do you see that chart?  
 10 A. Yeah, I see it.  
 11 Q. Okay. Now, during -- during that time, any of the  
 12 colored time, you said earlier in response to Attorney  
 13 Perrell's question, we were selling the water. And I just  
 14 want to be clear about something.  
 15 If I drove a truck into -- to the facility,  
 16 right?  
 17 A. Yeah.  
 18 Q. Into the east facility, at any time on this chart.  
 19 A. Yes.  
 20 Q. And I was a truck driver.  
 21 A. Um-hum.  
 22 Q. Okay. I had to pay somebody, right?  
 23 A. Yes.  
 24 Q. When I drove. You weren't there, so you don't  
 25 know really how the process worked, right?

1 A. I know -- I was not there, but I know how it  
 2 works.  
 3 Q. Okay. So then the truck driver drove in. And --  
 4 and now the truck driver has to pay.  
 5 How does the truck driver pay? Who does the  
 6 truck driver pay?  
 7 A. I understand the truck driver will go to the  
 8 cashier and pay. The -- the one that you see in very,  
 9 very -- not -- not rapidly -- not daily. He comes once a  
 10 week. Once every 2 weeks. He only have one truck. But  
 11 there's customers own 3-4, up to -- maybe some of them up to  
 12 10 trucks. These people, it was easier for them -- none of  
 13 them -- none -- the owner cannot drive the truck, he has  
 14 drivers, so it's preferred to pay by checks, not by cash and  
 15 not keep receipt.  
 16 Wally permit them to take -- some of them pay  
 17 money in advance and bill against it. Or some -- some of  
 18 these people will -- we will give them a credit and they  
 19 come and pay. Both ways.  
 20 Q. Okay. Okay. So let's talk about both ways.  
 21 So before we talk about the checks, we'll put  
 22 that over here for a second. We'll just talk about the  
 23 truck, individual truck driver who drives up.  
 24 A. Um-hum.  
 25 Q. The individual truck driver drives up. He says, I

1 want a truckload of water. He goes into the store.  
 2 A. Um-hum.  
 3 Q. He gives a cashier, the Plaza Extra store cashier,  
 4 the money.  
 5 A. Okay.  
 6 Q. Okay. And the store cashier gives him a receipt?  
 7 A. Yes.  
 8 Q. Okay. Now, the other way you just described is,  
 9 he might make a special deal with Wally where he wants to  
 10 pay by check.  
 11 A. Um-hum.  
 12 Q. And if I understand what you said, he can pay by  
 13 check two different ways.  
 14 A. Yes.  
 15 Q. He can send a check to Plaza Extra supermarkets  
 16 that says, I'm paying a month in advance. And then he would  
 17 bring his trucks in and take the water out.  
 18 A. Yes.  
 19 Q. Or he could pay -- he could take some water out  
 20 and then pay at the end of the month?  
 21 A. Yes.  
 22 Q. Okay. And the person that he would talk to about  
 23 that was Wally, right?  
 24 A. Wally is the one who set up this.  
 25 Q. Right. Okay.

1 And -- and -- and the person who took the  
 2 money in, if it was in the store, was the Plaza Extra  
 3 cashier, right?  
 4 A. Yes.  
 5 Q. Okay.  
 6 A. I would assume so, yes.  
 7 Q. And -- and who -- do you -- I don't know if you  
 8 know this. If you don't, just say, I don't know. Who would  
 9 actually pump the water into the truck?  
 10 A. You got it. I don't know.  
 11 Q. Okay. I'll ask somebody else then.  
 12 And who -- if -- if the person had to be  
 13 billed for water, who would do the billing?  
 14 A. Someone in the office.  
 15 Q. Okay. Somebody in the Plaza Extra supermarket  
 16 office?  
 17 A. Yeah.  
 18 Q. Okay. And did they -- did they ever get a bill  
 19 from the -- the tenant account? Did they ever pay a check  
 20 into the tenant account?  
 21 A. A tenant -- which you mean, tenant account?  
 22 Q. The United account. The separate United account.  
 23 A. I don't charge for water. None of my tenant pays  
 24 water.  
 25 Q. Okay.

1 be fair enough, and I'm not that greedy. I let him feel  
 2 good, my partner.  
 3 Q. Okay.  
 4 A. I don't mind. I'm giving it to my tenant for the  
 5 past 40 years free. I could give it to my partner for as  
 6 long he's in the store.  
 7 Q. That's not what I'm asking.  
 8 What I'm asking is, is a slightly different  
 9 question. Can I ask you questions --  
 10 A. You ask me any question you wish.  
 11 Q. Okay. I'll ask you the questions.  
 12 When -- when you built the new system with  
 13 the cistern, when you came up with that idea, right, to do  
 14 that?  
 15 A. Yes.  
 16 Q. Did you do that when you were rebuilding the  
 17 store?  
 18 A. You see, the system, you could say, it split into  
 19 two. The availability of the water, the water is available  
 20 from the beginning of the building in -- in the '80s. I  
 21 have 4-5 well on that property. And I have, I think, three  
 22 big cistern on the property. And one of the cistern was  
 23 designed it to the store, inside the store.  
 24 This one now, I -- as I tell you, I don't  
 25 need no cistern, honestly. I just needed a cistern to level

1 A. And they get it directly. No transportation. It  
 2 does not even go into that cistern.  
 3 Q. Okay. So there are two different systems?  
 4 A. Yeah. All my tenant for the past 40 years never  
 5 pay for water.  
 6 Q. Okay. And who -- between you and Yusuf Yusuf, who  
 7 would be the person who could tell me a little bit something  
 8 about the system itself, like how the system was built  
 9 and -- and things like that? Would that be you or would  
 10 that be Yusuf Yusuf?  
 11 A. When you say "system," what kind of system you  
 12 talking about?  
 13 Q. Well, when you rebuilt the store, you built a  
 14 separate water system that fed into the cistern that you use  
 15 to sell the water to the trucks, right?  
 16 A. I told you the purpose of putting up that cistern;  
 17 it's to level off the entrance of --  
 18 Q. I understand that.  
 19 A. -- of the premises.  
 20 Q. No, I understand that.  
 21 A. And then we used it -- the only different is I get  
 22 commitment for -- when I have to spend about \$4- to  
 23 \$10-12,000 for big jumbo pump and piping to the cistern into  
 24 the truck preparation. That's the only -- when I came up  
 25 with that idea, and I using the partnership money, I have to

1 off the driveway. And I founded an opportunity. And I have  
 2 -- excuse me -- I have the water. I have the roof. And I'm  
 3 forced to put in this, because if I put fill, it's useless.  
 4 You know, when you go fill, about 10-12 feet, I don't care  
 5 how much you compact it, it's going to sink.  
 6 Q. I understand that.  
 7 A. So that's why I came up with the idea a cistern.  
 8 Take out all the fill and bring the cistern and collect the  
 9 water. And then all that is just to provide convenience for  
 10 the truck to come.  
 11 The only thing when the piping came up,  
 12 this -- this a new idea came up in my mind not to waste the  
 13 opportunity.  
 14 Q. Let me ask the question a different way.  
 15 A. I check with my partner, if it's okay. He say,  
 16 Okay. Go ahead.  
 17 Q. Let me ask the question a different way.  
 18 Where's the cistern, the one we're talking  
 19 about, the one that you elevated, you know, that allowed the  
 20 trucks to get access? Is that on the old property or on the  
 21 new property?  
 22 A. Which old property?  
 23 Q. Well, you bought an extra acre.  
 24 A. Yeah.  
 25 Q. Okay.

1 A. It's a new property.  
 2 Q. It's on the new property?  
 3 A. Yes.  
 4 Q. So -- so that cistern wasn't there before you got  
 5 the new property?  
 6 A. No.  
 7 Q. Okay. And how did you get the new property?  
 8 A. I get the new property when we was running the new  
 9 supermarket -- the old supermarket. Unfortunately, we have  
 10 fire started at our store, and naturally we have insurance.  
 11 And we finally collected our insurance. And at that time,  
 12 unfortunately, we was heavily penalized because we was  
 13 underinsured. So we -- we, as a family, his wife and my  
 14 wife are sisters. They always in my house, at their -- in  
 15 their house, you know. I says -- and we could -- we would  
 16 like to continue together. I says, Look, the old store now  
 17 maybe is good, but not for the future. That's my language  
 18 to Wally. I tell him, this store, 33,000 square foot is --  
 19 is an excellent for what's going on now, but soon, in the  
 20 future, this type of store is not going to survive. And we  
 21 have that fire. I asked Wally -- let's put it Wally,  
 22 because 99.9 of my discussion is with Wally. His father, I  
 23 don't bother to talk to him. Just hello, how are you, and  
 24 that's it. And --  
 25 Q. Can -- can I ask you one other question?

1 A. No, no, no, no, let me finish your question,  
 2 please.  
 3 Q. Okay.  
 4 A. I told Wally, Since we're going in, the best thing  
 5 is to go expand and we have no more property to expand. I  
 6 say, Let's see if we can buy at least an acre from the  
 7 neighbor. I'm willing to put in 100,000 of my own money,  
 8 the rental money, and if -- if the partnership bought the  
 9 additional one fifty, I will give the store 10 years at \$3,  
 10 at the same old price. \$3 a square foot. And he says, It's  
 11 okay. I'll go for it. I did not want to buy the land.  
 12 Wally's the one negotiate it. Wally is the one bought it,  
 13 United Corporation. Wally knows that he can get -- being  
 14 compensated. Look, there is no space in St. Croix since the  
 15 '40s. Not since the '80s at \$3 a square foot. Wait a  
 16 minute, I commit myself for additional 10 years, because,  
 17 you know, really, really my -- my commitment, really,  
 18 because it's -- I have five sons with me and five daughter.  
 19 Three with me and two with them. So it wasn't really a big  
 20 deal to give Mohammad Hamed free ride and his children,  
 21 because I figure out, it's my daughter enjoying it. That  
 22 was the -- that's the whole thing all about. Otherwise, I  
 23 will treat Mohammad Hamed just like I treat any other Arab.  
 24 Q. Okay. Now --  
 25 A. But I was treating him as a family.

1 Q. But to go back to the water for a second.  
 2 A. Yeah, go ahead.  
 3 Q. When you put the cistern in.  
 4 So you put the cistern in, using the  
 5 insurance money, and also did you take out some loans?  
 6 A. Excuse me, sir. The insurance money is the  
 7 landlord money.  
 8 Q. Okay. But also did you take out some loans?  
 9 A. I -- maybe. I'm not sure.  
 10 Q. After the store burned down?  
 11 A. I'm not sure. Maybe I took a loan, maybe I  
 12 didn't.  
 13 Q. Okay.  
 14 A. But -- please, I would like to make this clear:  
 15 If I ever take a loan after we became partner, I have never  
 16 invest a penny outside of the business. If I get a loan, I  
 17 get it for the business, because before we become a partner,  
 18 I have the shopping center free and clear. It does not owe  
 19 a penny. I have a house on top of the hill, 12,500 square  
 20 foot. No lien whatsoever. So, if any loan ever option is  
 21 being to the interest of Plaza Extra.  
 22 Q. And Plaza Extra would have paid back that loan?  
 23 A. Yes.  
 24 Q. Okay. That's what I was trying to get to.  
 25 Okay. So now you said that -- that the way

1 you figured out the -- the water amount, you saw a document  
 2 that had Wally's handwriting on it. And it had 2 years:  
 3 One year you said was between 50 and 55, you're not --  
 4 A. Fifty and sixty.  
 5 Q. Oh, 50 and 60.  
 6 A. Yes.  
 7 Q. And the next year was 72?  
 8 A. Absolutely 72.  
 9 Q. Okay. So there was a big difference between those  
 10 2 years, right?  
 11 A. Yeah, I could say that.  
 12 Q. Okay. But -- but to get the number that you used,  
 13 you averaged the two years?  
 14 A. I add both of them to come up with an average.  
 15 Q. Okay. But for the next 10 years, it could have  
 16 run at 50, you don't know?  
 17 A. It could have run at a hundred twenty-five.  
 18 Q. It could have run at two fifty?  
 19 A. Well, let's say --  
 20 Q. Okay.  
 21 A. Let's be realistic.  
 22 Q. Okay. All right. And then finally, you said  
 23 Wally never told you that the amount of -- of water was --  
 24 was -- was higher or lower at any other year.  
 25 Did -- during all of the years that are on

1 water, where's he going to go on this?  
 2 A. He's going to go here, on this.  
 3 Q. Okay. And where is the water that he would get in  
 4 his truck coming from?  
 5 A. From here.  
 6 Q. Okay. How did you know that?  
 7 A. Because I was the one who was involved in the  
 8 installation.  
 9 Q. Okay.  
 10 A. Now, the water that was supplying the cistern --  
 11 Q. Um-hum.  
 12 A. -- was from two wells out of four wells we had at  
 13 that time.  
 14 Q. Okay. Where are the wells?  
 15 A. The well was -- one was here. Can I mark on this?  
 16 MR. HARTMANN: Yeah, just every time you put  
 17 something else in, just put another letter.  
 18 A. Okay.  
 19 MR. HARTMANN: So what letter is it?  
 20 A. This is the well.  
 21 MS. PERRELL: E.  
 22 MR. HARTMANN: I thought the standpipe was E.  
 23 A. And there's another one out here.  
 24 Q. (Ms. Perrell) Okay. Make that F.  
 25 A. Okay. The standpipe.

1 MR. HARTMANN: What letter is that?  
 2 A. I can put --  
 3 MR. HARTMANN: G.  
 4 A. -- G.  
 5 MR. HARTMANN: Okay.  
 6 A. Okay.  
 7 Q. (Ms. Perrell) Okay. So the water -- so what I'm  
 8 trying to understand is, is the water that is actually being  
 9 sold is coming from the cistern -- we need to put a letter  
 10 on this one. Make this H just to --  
 11 MR. HARTMANN: What is it?  
 12 MS. PERRELL: I'm getting ready to describe  
 13 it.  
 14 MR. HARTMANN: Okay.  
 15 Q. (Ms. Perrell) It's the cistern that is underneath  
 16 the pharmacy; is that correct?  
 17 A. No, behind the pharmacy.  
 18 Q. Behind the pharmacy?  
 19 A. Underneath, behind, I'm not sure, but it was -- in  
 20 that. Behind the pharmacy is where the access to the pump  
 21 was.  
 22 Q. Okay. And this is the H, which is the -- I'm  
 23 going to call it the pharmacy cistern, okay?  
 24 A. Um-hum.  
 25 Q. The H pharmacy cistern was a cistern that was in

1 place and had been in place in the -- on the property before  
 2 the fire?  
 3 A. Correct.  
 4 Q. Okay. And the water that fed that cistern was  
 5 from the two wells, F and E; is that correct?  
 6 A. Correct.  
 7 Q. And so the water that was being sold to the  
 8 trucks, when the trucks would pull up, the water trucks  
 9 starting in 1994, came from the wells -- well, let me ask  
 10 you this: Were both Wells E and F on the property and  
 11 installed before the fire?  
 12 A. Before the fire, yes. I know this one, yes. And  
 13 this one, I believe so. I can't recall, but we -- I know we  
 14 had one in the back and one in the front from years ago  
 15 or -- I'm not sure. I'm not sure.  
 16 Q. Okay. So the sales are going from F and E, and  
 17 the cistern that is H; is that correct?  
 18 A. Right.  
 19 Q. Okay. These new cisterns, D-1 and D-2.  
 20 A. Right.  
 21 Q. That were -- these were definitely built  
 22 post-2000 -- or post fire, correct?  
 23 A. Right.  
 24 Q. Okay. Was water from these two utilized to sell  
 25 to the trucks in 1994?

1 A. We used to have a pump to supply it. The  
 2 standpipe.  
 3 Q. Um-hum.  
 4 A. But we always -- we always had problems with that  
 5 pump.  
 6 Q. Um-hum.  
 7 A. And it was on the -- this roof here, all the water  
 8 went into this cistern.  
 9 Q. Um-hum.  
 10 A. And into this cistern, it overflows to this  
 11 cistern.  
 12 Q. Okay.  
 13 A. So if we was to use this cistern for truckers, it  
 14 would empty out real quick. We didn't have water going in  
 15 unless it's rainwater, and that was it.  
 16 Q. Okay.  
 17 A. So -- and at the same time, we always had problems  
 18 with it. It was a smaller pump versus the pump that we had  
 19 here.  
 20 Q. Okay.  
 21 A. And so if we got it working, we probably got it  
 22 working and it would break down. You know, we spent more  
 23 time -- I spent a lot of time rearranging the piping and all  
 24 that.  
 25 Q. All right.

1 A. Yes.  
 2 MS. PERRELL: All right. I have no further  
 3 questions.  
 4 CROSS-EXAMINATION  
 5 BY MR. HARTMANN:  
 6 Q. On the maintenance, didn't you have -- say earlier  
 7 in your deposition that you had to go down there and do  
 8 stuff a lot, working with the cistern and the stuff?  
 9 A. Yeah, yeah.  
 10 Q. Weren't you an employee of the partnership?  
 11 A. Yeah, of United Corporation.  
 12 Q. But you were being paid out of the grocery store?  
 13 A. Yeah.  
 14 Q. Okay. Turning back to this. I'm confused now.  
 15 Yesterday on Exhibit 4, yesterday, I had you  
 16 draw what has turned out to be the most important exhibit,  
 17 I'd like to point out. And you said that -- I asked you to  
 18 draw a box around what is the supermarket.  
 19 A. Right.  
 20 Q. And you've put a cistern. You said that the main  
 21 cistern that's being used here is the H cistern; is that  
 22 right? The one you put the H by?  
 23 A. For the standpipe for the truckers?  
 24 Q. Yeah, for the truckers.  
 25 A. Yes.

1 MR. HARTMANN: Okay.  
 2 MS. PERRELL: Not inside the store.  
 3 A. Sorry, yeah. Not inside the store.  
 4 Q. (Mr. Hartmann) Let me add, sir. I'll do it.  
 5 And -- and some of that water was coming from  
 6 here?  
 7 MS. JAPINGA: Say where you're saying.  
 8 Q. (Mr. Hartmann) From F; is that correct?  
 9 A. Yes.  
 10 Q. Okay. But it was being stored in cisterns in A?  
 11 A. In A. I --  
 12 Q. Okay.  
 13 A. Some of that cistern, if I'm not mistaken, was  
 14 under -- under one of the tenants. There was a small bay  
 15 on -- on --  
 16 Q. Okay. And you said that sometimes water from D-2  
 17 was used in the standpipe as well, right?  
 18 A. No.  
 19 Q. It was never used?  
 20 A. We always had problems, and that was D-1.  
 21 Q. D-1 was the overflow?  
 22 A. D-1 was the back cistern, --  
 23 Q. Okay.  
 24 A. -- which used to overflow from D-2.  
 25 Q. So one of them you did sometimes use to supply the

1 Q. But, excuse me, but that seems to be inside of A?  
 2 A. Correct. Yeah, correct.  
 3 Q. So there's a big cistern standing up on the floor  
 4 somewhere inside of A?  
 5 A. Do you know what's a cistern?  
 6 Q. Yeah, I got a general idea. I know that these  
 7 outside are standing up, right?  
 8 A. No.  
 9 Q. Oh, they're buried?  
 10 A. Yeah.  
 11 Q. Oh, okay.  
 12 So all of this stuff is buried?  
 13 A. Yeah.  
 14 Q. Okay. So this is actually buried underneath the  
 15 store?  
 16 A. Yes.  
 17 Q. Okay. And that's the store that the partnership  
 18 leases?  
 19 A. Yes.  
 20 Q. Okay. So all of the water that was being given to  
 21 the truckers came from basically a cistern that was located  
 22 inside the store?  
 23 A. Right.  
 24 Q. Okay. And --  
 25 MS. PERRELL: I would object.

1 standpipe. You know that because you had problems with it?  
 2 A. We always had problems with it.  
 3 Q. Okay.  
 4 A. Always had problems. We never could get it  
 5 working.  
 6 Q. But sometimes it worked and sometimes it didn't?  
 7 A. It was just there.  
 8 Q. Okay. So where did all the water in D-1 and D-2  
 9 go?  
 10 A. To the store.  
 11 Q. To the store. Okay.  
 12 So this one that's located underneath the  
 13 store, the H cistern, you said you installed the pumping  
 14 cistern?  
 15 A. I coordinate the pumping.  
 16 Q. Okay.  
 17 A. To install it. I -- I, maybe, physically did it  
 18 with the plumber or I was the one who did the --  
 19 Q. So to -- to look at this cistern, I would go into  
 20 the store and I'd go behind the pharmacy and I'd open a  
 21 hatch; is that right?  
 22 A. No, it's not a hatch. It's concrete.  
 23 Q. It's what?  
 24 A. It's a concrete -- a concrete hatch.  
 25 Q. Okay. A thing? It's a --

1 A. Concrete cover.  
 2 Q. A big concrete cover. Okay.  
 3 A. Right.  
 4 Q. And where would I go to see the actual motor  
 5 that's driving that?  
 6 A. You should be able to go into the warehouse and  
 7 see that.  
 8 Q. Warehouse in the supermarket?  
 9 A. The warehouse in the back of the supermarket.  
 10 Q. Okay. And if -- if I went to that pump and I  
 11 followed -- there's electric lines going into it, right? If  
 12 I followed those electric lines, where would they go?  
 13 A. I don't know.  
 14 Q. Well, I mean, somebody was paying to run the pump?  
 15 A. Yeah, yeah.  
 16 Q. The store?  
 17 A. I believe so.  
 18 Q. Okay. I've been told I have to say which letter  
 19 it is.  
 20 So just to be clear, the -- could you draw  
 21 in, I think, we're up to K, could you draw in where, on that  
 22 map, the electrical connection would be? 'Cause apparently  
 23 me saying "there" is not going to look very good on the  
 24 transcript. So just wherever you think the electrical  
 25 supply was for the --

1 A. Well, the pump was in -- in H, so --  
 2 Q. The pump was in H, okay.  
 3 A. So the electrical is in H.  
 4 Q. Okay. And -- and where was the meter that the  
 5 pump ran to?  
 6 A. I'm not sure.  
 7 Q. Okay. But it was somewhere in the store?  
 8 A. It was -- I'm not sure what it was hooked up to.  
 9 If it was hooked up to the store or not, --  
 10 Q. Okay.  
 11 A. -- I'm not sure.  
 12 Q. Okay. All right.  
 13 A. I didn't know.  
 14 MR. HARTMANN: Okay. I have no further  
 15 questions.  
 16 REDIRECT EXAMINATION  
 17 BY MS. PERRELL:  
 18 Q. I just have one follow-up question.  
 19 With regard to Cistern H that is labeled  
 20 here.  
 21 A. Um-hum.  
 22 Q. And you said it's under the pharmacy. This  
 23 cistern existed before the fire; is that correct?  
 24 A. Correct.  
 25 Q. Okay. So none of the funds that were part of the

1 reconstruction build-out after the fire were utilized to  
 2 build this cistern, correct?  
 3 A. No. And I'm going to go back a little bit.  
 4 Before the fire, that cistern was actually  
 5 under a tenant, one of the tenants before, 'cause the store  
 6 never -- the store was not that big. It was maybe about --  
 7 a little bit smaller than that box, so this H cistern was  
 8 under one of our tenants.  
 9 Q. Okay. Before the fire?  
 10 A. Before fire.  
 11 Q. Okay.  
 12 A. Yes.  
 13 Q. And the -- the build-out, there was nothing  
 14 relating to the subsequent build-out of the store after the  
 15 fire that contributed to the construction of this cistern?  
 16 It was already there?  
 17 A. It's already there, yeah.  
 18 Q. Okay. And the same would go for at least the Well  
 19 F, correct?  
 20 A. I believe so, yes.  
 21 Q. Okay. All right. And what about Well E?  
 22 A. The same thing.  
 23 MS. PERRELL: Okay. All right. I have no  
 24 further questions.  
 25

1 RE-CROSS-EXAMINATION  
 2 BY MR. HARTMANN:  
 3 Q. Weren't some wells put in?  
 4 A. Yes.  
 5 Q. Which wells were put in -- in that time when the  
 6 rebuilding was done and the new cisterns were put in?  
 7 A. I believe we put in E. E, at that time.  
 8 Q. Okay. And -- and what does E do? What does E  
 9 supply?  
 10 A. E supply H.  
 11 Q. E supplies H?  
 12 A. Right.  
 13 Q. Okay. So when you put in a new well, E, it was  
 14 pouring into the Cistern H?  
 15 A. Right.  
 16 MR. HARTMANN: Okay.  
 17 MS. PERRELL: I have no further questions.  
 18 MR. HARTMANN: I have no further questions.  
 19 THE VIDEOGRAPHER: This is the continuance of  
 20 the deposition. The time is 12:46.  
 21 (Short recess taken.)  
 22 THE VIDEOGRAPHER: This is the continuation  
 23 of the deposition of Mafeed Hamed, January 22, 2020. The  
 24 time is 12:48. The witness has been sworn in.  
 25

1 YUSUF YUSUF,  
 2 called as a witness, having been first duly sworn,  
 3 testified on his oath as follows:  
 4 DIRECT EXAMINATION  
 5 BY MS. PERRELL:  
 6 Q. Okay. Could you please state your name for the  
 7 record?  
 8 A. Yusuf Yusuf.  
 9 Q. Okay. Yusuf Yusuf, we've been talking about a  
 10 number of things having to do with the water revenues that  
 11 are generated at the Plaza Extra -- I'm sorry, at the, well,  
 12 I'll just call it the Plaza Extra at St. Croix, okay?  
 13 A. Okay.  
 14 Q. All right. I just want to ask you a couple of  
 15 questions relating to that.  
 16 At what point, or did at any point, you have  
 17 involvement in tracking or collecting revenues for the water  
 18 sales?  
 19 A. I started in -- end of September in 2000, so  
 20 whatever was in place, I just continued from there forward.  
 21 So I can't recall exactly when I had any involvement in the  
 22 water.  
 23 Q. Okay. So end of September, 2000. All right.  
 24 And do you recall anyone meeting with you, or  
 25 showing you what needed to be done with regard to collection

1 Q. Um-hum.  
 2 A. -- they would go to the register and present that  
 3 receipt to the receiving --  
 4 Q. Um-hum.  
 5 A. -- to show what amount he's paying for and what's  
 6 going to be collecting. And that -- that was it. That's  
 7 the only thing that I would -- I would have knowledge of.  
 8 Q. Okay. No, what I'm trying to understand is, is I  
 9 understand the process that the truck driver had to go  
 10 through to pay for it. Go in the back. Show his receipt.  
 11 He gets a key or whatever. He -- they fill it up. They  
 12 verify the amount and so forth. And he fills it and he's on  
 13 his way. I'm fine with what's going on with the truck,  
 14 water truck.  
 15 What I'm trying to understand is, is at the  
 16 front, then, the money came in for the -- for the water,  
 17 right, to the cashier?  
 18 A. Correct. It was collected at the -- majority of  
 19 the time -- well, all of the time I know for someone walking  
 20 into the front would be at the service counter.  
 21 Q. Okay. And so my question is, is as the money was  
 22 coming into the service counter, after the time that you  
 23 were there and that you had any involvement, did any of  
 24 those folks at the service counter, the cashiers, anyone at  
 25 the service counter, ever provide, then, to you, a stack of

1 of the water revenue?  
 2 A. I didn't -- I didn't collect anything for water.  
 3 Everything was processed through two -- two steps,  
 4 basically.  
 5 Q. Um-hum.  
 6 A. The cash register in the front, and whoever  
 7 collected -- in other words, they generated a book.  
 8 Q. Um-hum.  
 9 A. A tally on whoever, like, for example, Marco  
 10 Trucking, he would have like a large amount of collecting  
 11 water.  
 12 Q. Um-hum.  
 13 A. At, you know, per day or per week, so he -- they  
 14 kept a tally, and that was transferred to the office.  
 15 Q. Okay. And so when a -- a particular water truck  
 16 would come and make a payment to the cashier and the receipt  
 17 would be generated, they would go fill up the truck, but  
 18 they paid. They paid cash or would pay for it.  
 19 Was those -- was that -- what happened to  
 20 that cash?  
 21 A. I don't know.  
 22 Q. Okay. Did anybody ever then provide you copies of  
 23 the receipts relating to the water sales?  
 24 A. The -- just as you said, someone would cash --  
 25 that would want to purchase water, --

1 receipts, or anything relating to the water sales?  
 2 A. No.  
 3 Q. Okay. They didn't give it to you on a daily  
 4 basis?  
 5 A. No, I never got them.  
 6 Q. Okay. Do you know how they rung up water?  
 7 A. Well, they would either run it up as a grocery,  
 8 the tender grocery, tender non-food. Anything just to be  
 9 able to show that there was \$12 changed, or 15, or whatever  
 10 amount was purchased, and they would send it to the back  
 11 through the guidance of the young lady from the back.  
 12 Q. Um-hum.  
 13 A. She would say, you know, there's someone in the  
 14 front that's paying for a truck load, and this is how much  
 15 he's paying.  
 16 Q. Okay.  
 17 A. And that's it.  
 18 Q. Okay. So was -- when they rung it up, did they  
 19 keep any kind of -- what -- was there ever a way, if you  
 20 wanted to know, let's say in 2000, how much water revenue  
 21 there was for all the people that came to the front and  
 22 would pay in the manner that you just described, how would  
 23 you have gotten that information?  
 24 A. I was not in control of it.  
 25 Q. Okay. Who was?

1 A. So everything was mainly between Wally and Mafi.  
 2 Q. Okay. All right. So do you know if, after you  
 3 were there in 2000, Mafi would receive receipts relating to  
 4 the water sales?  
 5 A. Not that I know of. I just know that whatever was  
 6 collected, it was collected under grocery, non-food. And  
 7 however they have collected to -- to know how much was  
 8 generated, that -- I was never taught that.  
 9 Q. Okay.  
 10 A. I was never given direction of how to gather that  
 11 information.  
 12 Q. Okay. And with regard to the people that would  
 13 have multiple trucks coming and so forth, how was the money  
 14 collected from those folks?  
 15 A. Well, if they would -- they would generate -- they  
 16 would have a receipt book and they would keep a log of, if  
 17 it's a 3,000-gallon, 5,000-gallon. And I can't -- I don't  
 18 know if it was at the end of the week, or at the end of the  
 19 day, that they turned in the book to the office.  
 20 Q. Okay. And then did someone, like one of the  
 21 administrative folks, generate an invoice or something? How  
 22 did that work?  
 23 A. Well, everything was sent to Wadda Charriez.  
 24 Q. Um-hum.  
 25 A. And she would -- she was the one who used to --

1 collected any of the funds.  
 2 Q. Okay.  
 3 A. So, like, you know, normal procedure, you have a  
 4 log.  
 5 Q. Um-hum.  
 6 A. And then you would send out an invoice.  
 7 Q. Okay. All right. And this log is something that  
 8 you're saying is kept in the back of the store where the  
 9 actual fill-up was happening?  
 10 A. They used -- they used receipts box as a reference  
 11 of a log --  
 12 Q. Um-hum.  
 13 A. -- so that way they could send it to the office to  
 14 say, Hey, this -- this company, Marco Trucking or Hamilton,  
 15 have collected so much in this period of time, and here you  
 16 go. This is the book.  
 17 Q. Okay. Was there a point in time in which there  
 18 was a specific number that was utilized, like a -- and  
 19 I'm -- I'm sorry, I'm not using the right words, like a POS  
 20 number, or a general ledger number, or something to indicate  
 21 that a sale was a water sale?  
 22 A. That was generated like very late. I would say  
 23 this -- it was generated recent, to my knowledge, like 2013.  
 24 Q. Okay.  
 25 A. Because I'm the one who was -- who created that.

1 Q. Okay.  
 2 A. Like, for example, a code.  
 3 Q. Okay.  
 4 A. You would walk into the store and you would want  
 5 to purchase banana or apples, they would put in a code and  
 6 weigh it. But with this, a trucker would come to the front.  
 7 They would put in a code to reference that.  
 8 Q. Okay.  
 9 A. But that was done in 2013.  
 10 Q. Okay. So prior to 2013, is it fair to say, at  
 11 least as to your knowledge, there was no specific code that  
 12 was being used all the time consistently to demonstrate  
 13 water revenue?  
 14 A. Correct. There was no -- there was no, per se,  
 15 code, other than they just randomly put whatever tender,  
 16 which would be grocery. It could be dairy. It could be  
 17 produce. Whatever is generated, but majority of the time,  
 18 it would be grocery or non-food.  
 19 Q. Okay. So based upon the amount of time that you  
 20 spent at the store, do you have a sense, or a belief as  
 21 to -- or any knowledge of the number of trucks that would  
 22 normally come, let's say in -- when you first started in  
 23 2000, how many trucks were coming, average trucks per day,  
 24 were coming to get water? And then did it change over time?  
 25 A. Well, when I first started, a lot of different

1 truckers used to come and get water from us. And I would  
 2 say 10 plus, more than 10.  
 3 Q. Um-hum.  
 4 A. And it -- it all depends on the season. Summer  
 5 versus winter. It -- it varies. You would -- sometimes you  
 6 would get more than 15 trucks a day. Sometimes you'd get as  
 7 low as maybe eight, six.  
 8 Q. Okay. All right. And was there a period of time  
 9 just over the course -- I understand seasonal issues and so  
 10 forth, but were there a period of years where that just  
 11 dropped off, as you recall?  
 12 A. No. Between -- I would -- I would say it started  
 13 to slow down maybe 2 years ago.  
 14 Q. Um-hum.  
 15 A. And that's -- the reason for that is because of  
 16 our changes that we've been -- made in the back. We made it  
 17 more difficult for them to come and get that easy service.  
 18 Q. Okay. So I'm talking about between now -- between  
 19 April of 2004 until February of 2015, based upon your time  
 20 at the store during that time, do you recall any particular  
 21 period where it had significantly dropped or increased  
 22 during that 2 -- April 2004 through February of 2015 time  
 23 frame?  
 24 A. No.  
 25 Q. Okay. Based upon the information that you see --



1 I'm sorry, that you see in your position, do you have any  
 2 sense as to the value of the water sales on an annual basis?  
 3 A. No.  
 4 Q. Okay. All right. Do you have any knowledge as to  
 5 the wells that supply the water? Which wells are used and  
 6 which cistern used to supply the water?  
 7 A. Generally, yes, I do. There is a four-compartment  
 8 cistern that is underneath the pharmacy as per se right now,  
 9 and the pump room --  
 10 Q. Okay.  
 11 A. -- where we have the sprinkler system.  
 12 Q. Okay.  
 13 A. That is what mainly supplied the trucks --  
 14 Q. Okay.  
 15 A. -- that was collecting water.  
 16 Q. Okay.  
 17 A. And well-wise, would be the one directly outside.  
 18 We have four on the property.  
 19 Q. Okay.  
 20 A. And, generally, it was -- it was mainly two of  
 21 them all the time that catered to servicing the service  
 22 trucks.  
 23 MS. PERRELL: Okay. All right. I don't  
 24 think I have any more questions. Thank you.  
 25 A. You're welcome.

1 CROSS-EXAMINATION  
 2 BY MR. HARTMANN:  
 3 Q. I'm sorry, I got lost.  
 4 Have you -- you started -- when you first got  
 5 there, you took over the water fairly quickly, right? And  
 6 have you been the person sort of coordinating the water the  
 7 whole time?  
 8 A. No, I never took over the -- the water.  
 9 Q. No?  
 10 A. No.  
 11 Q. Who -- who ran the water after Mike and Mafi  
 12 weren't running it?  
 13 A. Well, it was always Wally and Mafi that kind of  
 14 showed me what is the normal business running for the water.  
 15 Q. Oh, okay.  
 16 A. Just like anything else in the store.  
 17 Q. But sometimes you did work on the water stuff,  
 18 generally?  
 19 A. Well, if you want to say "work on." Pump goes  
 20 down, yes, I catered to it.  
 21 Q. Okay. And -- and when you did that, whenever you  
 22 were doing that, who was paying you?  
 23 A. Plaza Extra was paying me.  
 24 Q. The supermarket?  
 25 A. I was an employee, yeah.

1 MR. HARTMANN: All right. I have no further  
 2 questions.  
 3 MS. PERRELL: No further questions. I think  
 4 we're good.  
 5 A. Okay.  
 6 MS. PERRELL: Okay.  
 7 THE VIDEOGRAPHER: That's the conclusion of  
 8 the deposition. The time is 1:28.  
 9 (Lunch recess taken.)  
 10 THE VIDEOGRAPHER: This is the continuation  
 11 of the deposition of Waleed Hamed. The time is 2:08.  
 12 WALEED "WALLY" HAMED  
 13 DIRECT EXAMINATION  
 14 BY MR. HARTMANN:  
 15 Q. Okay. Mr. Hamed, I'm going to need you to  
 16 actually come back over to the seat over here. I'm going to  
 17 have you look at a short video and ask you some questions  
 18 about it, if you could. I just have to turn -- the court  
 19 reporter needs the thing turned this way. I don't need this  
 20 transcribed, by the way.  
 21 THE COURT REPORTER: Your discussion with  
 22 him?  
 23 MR. HARTMANN: No, no, the -- the discussion  
 24 I do, but not --  
 25 THE COURT REPORTER: Yeah, of course.

1 MR. HARTMANN: -- the existing tape.  
 2 THE COURT REPORTER: Yeah.  
 3 THE VIDEOGRAPHER: Do you want this on film?  
 4 MR. HARTMANN: Yes. That's why I'm turning  
 5 it so you can see it.  
 6 MS. JAPINGA: Do you want him to sit next to  
 7 you, Carl?  
 8 MR. HARTMANN: It -- it doesn't really  
 9 matter. He'll be able to hear it. That's all that's really  
 10 important. This is ground we've all been over many times.  
 11 (Video played.)  
 12 Q. (Mr. Hartmann) Okay. You can take the seat back.  
 13 A. (Witness complies.)  
 14 Q. Now, I'll represent to you that -- I'll represent  
 15 to you that that was a deposition taken in this case on the  
 16 2nd day of April of 2014.  
 17 Did you attend that deposition?  
 18 A. Yes, sir.  
 19 Q. Okay. And did you see that testimony?  
 20 A. Yes.  
 21 Q. Okay. And do you recall the meeting between  
 22 yourself and Mr. Yusuf and your father that's being  
 23 described there?  
 24 A. Yes.  
 25 Q. Okay. Could you tell me what led up to that

# **EXHIBIT 4**



responsible for making all decisions regarding when the reconciliation would take place and hence when the rent would be paid. Hamed and I agreed at the outset that the rent would be calculated at a rate of \$5.55 per square foot for what is referred to as Bay 1, the primary space comprising the Plaza Extra-East store, which originally covered 33,750 square feet

2. Our decision to allow rent to accrue for some number of years before paying it was intended to enable the business to retain capital needed to grow the business.

3. This method of allowing rent to accrue for a number of years before being paid was important for the growth of the supermarket business for a number of reasons. First, at the time of the formation of the business agreement, the initial store, Plaza Extra-East, in St. Croix, was still in development. We thereafter made plans to open a second supermarket in St. Thomas (the store now known as Plaza Extra-Tutu Park), and it opened in October 1993. Later, we made plans to open a third grocery store in St. Croix (the store now known as Plaza Extra-West), and it opened in 2000. Construction began in 1998 and finished in 2000. Keeping money in the business for multi-year periods, rather than paying rent to United in monthly or even annual rent payments, ensured that the business would have the capital to establish and grow the stores in very challenging economic conditions.

4. For reasons discussed in more detail below, there has been only one reconciliation of accounts since our business agreement was formed, and it occurred at the end of 1993. The rent payment due from 1986 through December 31, 1993 was paid by means of a setoff on an account that reflected credits and debits made between Hamed and me. Specifically, Hamed's one-half portion of the rent was paid by means of a setoff against amounts I owed him by virtue of some large withdrawals I had made in preceding years.

5. In 1992, the Plaza Extra-East store burned down. As with all tenants in the United Shopping Plaza, the insurance policy on Bay 1 was paid to the property-owner, United. United decided to expand Bay 1 by purchasing an adjacent acre of land for \$250,000. I used \$100,000 of my personal funds and the balance was paid with insurance proceeds United received as the insured under a policy of insurance, which is required of all tenants of United Shopping Plaza. At that time, I agreed with Hamed, through his son, Waleed, to continue operating the Plaza Extra – East supermarket in Bay 1 of United Shopping Plaza. I further agreed to keep the rent at the much lower-than market rate of \$5.55 per square foot for a ten-year period. Specifically, I told Hamed that we would keep that rate in place for the ten years following the date the rebuilt store opened for business.

6. The Plaza Extra-East store was reopened in May 1994. The Plaza Extra-Tutu Park store had just opened in October 1993. Around the time that the Plaza Extra-East store reopened, I was arranging a Scotiabank loan to United for approximately \$5,000,000 for the benefit of the partnership. The loan was guaranteed by my wife and me, and it was secured by our home on St. Croix and by United's shopping center in St. Croix. Because money was short, Hamed and I agreed not to have the rent withdrawn, and to simply continue to accrue rent until such time as I made a demand.

7. Some time in 2002 or 2003, I began discussions with Waleed Hamed regarding how the rent would be calculated for Plaza Extra-East after the expiration of the ten-year period during which the \$5.55/square foot rent formula was in place. During those discussions, we recognized, as before, that the prior rent was far below fair market value, and the decision was made to set the rent based on a percentage of sales formula using the yearly sales of Plaza Extra-Tutu Park. Total payments made to that store's landlord, Tutu Park, Ltd., for a given year were to

be divided by sales for the same year at that store to determine a percentage, and that percentage was then applied to the sales at Plaza Extra-East to determine the rent to be paid by Plaza Extra-East to United for that year. There is no dispute concerning the formula for calculating the rent for Plaza Extra-East from May 2004 forward, since rent based upon that agreed formula was paid via a check signed by Waleed Hamed on February 7, 2012 in the amount of \$5,408,806.74, covering the period from May 5, 2004 to December 31, 2011. A calculation of the rent based on this formula and a copy of the check in the amount of \$5,408,806.74 is attached as **Exhibit A**.

8. Between 1994 and 2004, we discussed the rent issues on several occasions. We both agreed to continue accruing the rent because of the need for more capital for the then new St. Thomas store, and for the construction of the Plaza Extra – West store between 1998 and 2000. Between 2002 and 2003, I discussed with Hamed the new rental rate for the Plaza Extra – East store beginning May 5<sup>th</sup>, 2004. Also, in 2004, at about the time the new agreed-upon rent formula became effective, Waleed Hamed, acting on behalf of his father, and I discussed payment of the rent that had accrued since May 1994 at the \$5.55 per square foot rate. At the time, we were then embroiled in the criminal case, and all of the Plaza Extra accounts were frozen by an injunction. As a result, I made a decision and Waleed Hamed, on behalf of Hamed, agreed, that there was no prospect for the payment of the rent owed for the period since the last payment of rent and that payment of that rent would continue to be deferred. In addition, even if the ability to collect the rent had not been not blocked by the injunction, I was unable to calculate the rent for the second rental period and to do a full reconciliation of the partnership accounts, as I did not have the book of accounting entries called the “black book,” and also did not have the comprehensive, larger ledger showing advances against the partnership that Hamed and I had taken by means of withdrawals from store safes. The FBI had seized substantially all of the financial and accounting

records of the Plaza Extra Stores, including these items, when it conducted its raid on the stores in October 2001. Among other things, the black book reflected the exact date of the last rent payment, information I needed to accurately determine when the rent for the second period had begun accruing. And the larger ledger reflected the debits and credits between the two partners (for the funds taken by them and members of their families from the store safes in the form of advances against partners' accounts). I had no recollection (and neither did Hamed) of exactly what dates the rent for the preceding period had covered, and indeed was not sure whether it ended in 1992, 1993 or 1994. We therefore needed to consult the black book to determine the start date for the subsequent rental period, which in turn would affect the amount of rent that had accrued since the last payment. Waleed Hamed and I agreed that rent would be allowed to continue to accrue until it was possible to calculate the amount of rent due and make the payment. Another consideration that counseled in favor of letting the rent continue to accrue, rather than paying it, is that our criminal defense lawyers did not want us to take any actions that supported the existence of a partnership as the owner of the Plaza Extra Stores.

9. In the latter part of 2011 and early 2012, the injunction in the District Court criminal proceeding had been relaxed sufficiently to permit a payment for rent that had accrued to that date from the date of the last payment. However, the original problem regarding the absence of the records to accurately calculate the rent for the period ending in 2004, and to conduct a full reconciliation of the rents from the date of the last reconciliation, remained unresolved because of the absence of the black book and the ledger. Neither of these items had been returned. I did not want to either understate or overstate the rent amount, but wanted the dollar amount of rent to be exactly correct. By contrast, we did not need the black book to pay the rent covering the period

from May 5, 2004 to December 31, 2011, as we knew that the new rent rate was in effect for that time period.

10. In early 2012, I discussed with Waleed Hamed the payment of accrued rent, and we agreed that the May 5, 2004 to December 31, 2011 portion of the accrued rent should be paid, while the portion preceding that would be deferred. Waleed acknowledged that we could not pay all of the rent that had accrued from the date of last payment in 1993 to May 5, 2004, as we still had not recovered the black book to determine the exact starting point for that period, and there also were insufficient funds in the operating account to pay the rent due for the ten year period of January 1, 1994 to May 5, 2004. During that conversation in 2012, Waleed Hamed agreed that rent was owed for that period, and agreed that it would be paid once the black book was recovered and a proper calculation could be made, and when sufficient funds are available. Shortly after that discussion, the rent for the period May 5, 2004 to December 31, 2011 in the amount of \$5,408,806.74 was paid by a check signed by Waleed. See Exhibit A. The reason why the rent for the May 5, 2004 to December 31<sup>st</sup>, 2011 paid was paid before the rent for the January 1994 to May 5, 2004 period was that information regarding the exact starting date for that prior period was not available, while the period of May 5, 2004 to December 31, 2011 was certain as to start and end dates.

11. My son, Yusuf, found the black book in early 2013, among a large number of documents that were returned to us by the FBI. After receipt of the black book, at my instruction, the attorney for United and me sent a letter dated May 17, 2013 to Hamed's attorney requesting payment of the past due rent, as we then were able to properly calculate the dollar amount. See letter attached as Exhibit B. This letter contained errors in the amount of the outstanding unpaid rent that are corrected by the calculations set forth in this declaration. On May 22, 2013, counsel



for Hamed wrote a letter to my and United's counsel in which he advised that his client was now taking the position that because of the statute of limitations, profits did not have to be determined by deducting the unpaid rent for the 1994 to 2004 period. See letter attached as **Exhibit C**. Until receipt of this letter, nobody on the Hamed side had ever challenged or otherwise disputed this rental obligation or the terms of our partnership agreement that required rent to be deducted in order to determine profits.

12. I received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive in approximately mid-2010. When these documents were initially returned, I had no reason to suspect any wrongdoing by Hamed, Waleed Hamed or any other members of the Hamed family. Later in 2010, as I reviewed these documents, I discovered certain documents that led me to believe that Hamed and his son, Waleed, may have taken monies without my knowledge. In 2012, I discovered the tax returns for Waleed Hamed for various years, which reflected more than \$7,500,000 in stocks and securities owned by Waleed Hamed. I knew Waleed's salary as a Plaza Extra store manager, and knew that he had no other employment or source of income. I believed there was no way he could have legitimately accumulated that much wealth, but for having taken money from the partnership without telling me or making a record of it.

13. As to the primary space occupied by the Plaza Extra-East store, Bay 1, rent is due for two basic periods: a) 1994 – 2004, and b) 2012 through the present. Additional rent is due for limited periods when Plaza Extra-East used additional space for extra storage and staging of inventory.

14. The rent as to Bay 1 can be divided into four periods, two of which have been paid and two of which remain unpaid: 1) 1986 through December 1993 was paid as of December 31, 1993;

2) January 1, 1994 through May 4, 2004 has *not* been paid; 3) May 5, 2004 through December 31, 2011 was paid as of February 7, 2012; and 4) January 1, 2012 to date has *not* been paid.

15. The rent for Bay 1 from January 1, 1994 to May 4, 2004 (“Past Due Rent”) is due and owing. The Past Due Rent is \$3,999,679.73.

16. The rent for Bay 1 from January 1, 2012 to the present is due and owing. Although beginning in 2004 rent for Bay 1 was calculated on the basis of percentage of sales formula discussed above, once the disputes between the parties intensified, United sent a termination notice and requested the premises to be vacated. When Hamed refused to vacate despite receiving more than 1 year’s notice to vacate, United provided written notice of rent increases. Beginning on January 1, 2012 through March 31, 2012, rent was increased to \$200,000.00 per month plus 1% per month interest on the unpaid balance. Copies of the three Notice Letters from United are attached as **Exhibit D**. Beginning on April 1, 2012, rent was further increased to \$250,000.00 per month plus 1% per month interest on the unpaid balance. See Exhibit D. The total amount of the increased rent from January 1, 2012 through August 30, 2014 is \$9,155,371.52, as set forth in the latest notice letter. See Exhibit E.

17. While United claims the authority to require payment of the increased rent as set forth in the preceding paragraph, there is no dispute that rent is due from January 1, 2012 to date at least in the amount based on the same percentage of sales formula used to calculate the rent payment covering the period May 5, 2004 to December 31, 2011 that was made on February 7, 2012. Although United reserves its right to pursue its claims for the increased rent as to Bay 1 at trial, it is seeking summary judgment only for the undisputed rent calculated according to the same formula used for the previous payment of rent on February 7, 2012 of \$5,408,806.74, which is the

formula used at Plaza Extra – Tutu Park. See Exhibit F, which are the rent calculations that I prepared. See Exhibit F.

18. For 2012, the undisputed rent due is \$702,908. See Exhibit F, p.1.

19. For 2013, the undisputed rent due is \$654,190.09. See Exhibit F, p. 2.

20. For the period from January 1, 2014 through August 30, 2014, the undisputed rent due is \$452,366.03. This amount was calculated by adding the rent for 2012 and 2013 and dividing that sum by 24 months in order to determine an average monthly rent, which is then multiplied by 8, representing the eight months from January through August 30, 2014 ( $\$702,908 + 654,190.09 = \$1,357,098.09 \div 24 = \$56,545.75 \times 8 = \$452,366.03$ ). The total undisputed Current Rent is the sum of \$702,908, \$654,190.09 and \$452,366.03, which is \$1,809,464.12.

21. At periodic points in time, additional space was used by Plaza Extra-East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra-East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 (“Bay 5 Rent”). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by \$12.00 for 7.25 years. The total due for Bay 5 Rent is \$271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra-East has occupied and owes rent for Bay 8 (“First Bay 8 Rent”). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is \$323,515.63.

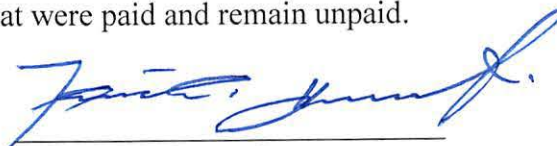
24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra-East has occupied and owes rent for Bay 8 (“Second Bay 8 Rent”). The Second Bay 8 Rent is calculated by

multiplying the square feet actually occupied (6,250) by \$6.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is \$198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is \$793,984.38.

26. The total outstanding, unpaid rent for all the space used by Plaza Extra-East from January 1, 1994 through August 30, 2014 is \$6,603,122.23, excluding the “disputed” increased rent from January 1, 2012 through the present. **Exhibit G** is a Chronology of Rents, which accurately reflects the history of the rents that were paid and remain unpaid.

Dated: August 12, 2014

A handwritten signature in blue ink, appearing to read 'Fathi Yusuf', is written over a horizontal line.

Fathi Yusuf

**United Corporation dba Plaza Extra**

**Tutu Park Store Sales:**

1-1-2004 to 12-31-2004	32,323,902.88
Less: 1-1-2004 to 5-4-2004	-10,849,029.02
Sales 5-5-2004 to 12-31-2004	<u>21,474,873.86</u>

**Tutu Park Store:**

Paid Rent, Water, & Property Tax	263,577.53
Paid 1.5% Overage	71,914.23
5-5-2004 to 12-31-2004	<u>335,491.76</u>

1-1-2005 to 12-31-2005	515,361.54
1-1-2006 to 12-31-2006	590,533.60
1-1-2007 to 4-1-2007	255,699.33
4-2-2007 to 12-3-2007	468,689.55
1-3-2008 to 12-5-2008	540,180.12
1-5-2009 to 12-10-2009	529,799.66
1-6-2010 to 12-3-2010	527,565.40
1-1-2011 to 12-31-2011	<u>541,175.61</u>

Rent, etc. 5-5-2004 to 12-31-2011	4,304,496.57
Parking Lot Cleaning	126,000.00
Total Amount Paid	<u>4,430,496.57</u> a

**Tutu Park Store Sales:**

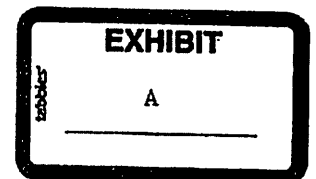
5-5-2004 to 12-31-2011	261,474,323.91
Portion of Sales - Rented building	<u>217,895,269.93</u> b
Portion of Sales - Area built by Plaza	43,579,053.98

Total Paid as a % of Sales (Rented Bldg.) = a/b 2.0333147073%

**Sion Farm Sales:**

Sion Farm Sales 5-5-2004 to 12-31-2011	273,884,222.70
Less: R/X	-7,874,897.13
	<u>266,009,325.57</u>

Calculated Rent as a % of Sales Sion Farm \$ 5,408,806.74




UNITED CORPORATION DE/IA PLAZA EXTRA  
UNITED SHOPPING PLAZA

64866

Check Number: 64866  
Check Date: Feb 7, 2012

Check Amount: \$5,408,806.74  
Discount Taken      Amount Paid

Item to be Paid - Description	Discount Taken	Amount Paid
Rent - Sion farm		\$ 4,088,806.74

UNITED CORPORATION DE/IA PLAZA EXTRA 4C & 4D ESTATE SION FARM CHRISTIANSTED, VI 00821 (340) 778-6240 (340) 719-1870		BANCO POPULAR DE PUERTO RICO 101-857218	64866
		DATE Feb 7, 2012	
		AMOUNT \$ 5,408,806.74	
Five Million Four Hundred Eight Thousand Eight Hundred Six and 74/100 Dollars			
PAY TO THE ORDER OF:	UNITED SHOPPING PLAZA P.O. BOX 743 C'STED ST. C ROIX, VI 00821	VOID AFTER 90 DAYS	
Memo: PLAZA EXTRA (SION FARM) RENT		 AUTHORIZED SIGNATURE	
⑆064866⑆ ⑆021606674⑆ 191⑆ 348830⑆			

Details on Back  
Security Features including

**DEWOOD LAW FIRM**

2006 Eastern Suburb Suite 101  
Christiansted, V.I. 00820  
Admitted: NY, NJ, MD, & VT  
T: 340.773.3444  
F: 888.398.8428  
info@dewood-law.com

**BY: FIRST CLASS MAIL & EMAIL ONLY**

**May 17, 2013**

**Joel Holt, Esq.  
2132 Company Street  
Christiansted, VI 00820**

**Re: Rent Due -- Plaza Extra -- East Operations**

**Dear Attorney Holt,**

**On behalf of United Corporation, the following is a notice of the value of rents due as follows:**

**Rent due for Plaza Extra -- East**

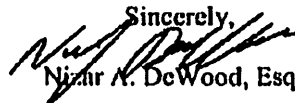
**Bay No. 1 January 1, 1994 through April 4, 2004  
69,680 SQ. FT. at \$5.55 10 years and 95 days      Balance Due \$3,967,894.19**

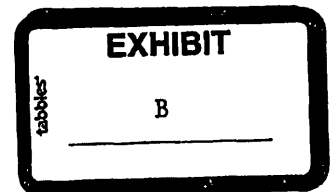
**Bay No. 5 May 1, 1994 through October 31, 2001  
3,125 SQ. FT. at \$12.00 6 years and 184 days      Balance Due \$243,904.00**

**Bay No. 8 April 1, 2008 through May 30, 2013  
6,250 SQ. FT. at \$12.00 5 years and one month      Balance Due \$381,250.00**

**Total Amount Due      \$4,593,048.19**

**These amounts are undisputed, and have been outstanding for a very long time - before 2012. This amount does not reflect the rent increase requested and noticed to Mohammed Hamed since January 1, 2012. We reserve our client's right for the additional rents due and owing based on the rent increase after January 1, 2012. Kindly review the amount with your client, and advise when a check can be issued. Thank you.**

Sincerely,  
  
Nizar A. DeWood, Esq.



**FY 004004**

# JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

Tele. (340) 773-8709  
Fax (340) 773-8677  
E-mail: [holtvi@aol.com](mailto:holtvi@aol.com)

May 22, 2013

Nizar A. DeWood  
The Dewood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

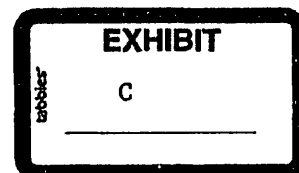
By Email and Mail

Re: Plaza Extra

Dear Attorney DeWood:

In response to your letter dated May 17, 2013, regarding "Rent Due" for Bay Nos. 1, 5 and 8, my clients have authorized me to respond as follows:

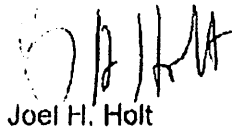
1. **Bay No. 1**-The rent claimed is for the time period between 1994 and 2004. There was never any understanding that rent would be paid for this time period, much less at that rate. In any event, this inflated claim is clearly barred by the statute of limitations.
2. **Bay No. 5**-The rent claimed for the time period between 1994 and 2001 is for vacant space was used without charge until a tenant could be located. Thus, there was never any agreement to pay rent for this space either. In fact, the rate your client is attempting to charge is grossly inflated as well. In any event, this claim is also barred by the statute of limitations.
3. **Bay No. 8**-The rent claimed for this Bay was never agreed to, as the items stored there were removed from a space in a trailer where everything was just fine. Moreover, no one would agree to pay the amount you claim is due for warehouse storage. The fact that this amount is even being sought confirms that Fathi Yusuf should no longer be a partner in the Plaza Extra supermarkets, as it is a breach of the duty of good faith and fair dealing (that every partner owes the partnership) when you try to extort money from your own business. In any event, these items will be removed from Bay 8 to the second floor of the store since your client now wants to charge rent for this space.





Ever since your clients lost the preliminary injunction hearing, they have done everything they can to undermine the partnership. Your clients' belated claim for inflated amounts of back rent (that were never agreed to) is just another example of your clients' continued efforts to try to undermine the Court's Order.

Yours,

A handwritten signature in black ink, appearing to read "J. H. Holt". The signature is written in a cursive style with a large initial "J" and "H".

Joel H. Holt

**UNITED CORPORATION**  
**4C & 4D Sion Farm**  
**St Croix, USVI 00821**  
Phone (340) 778-6240

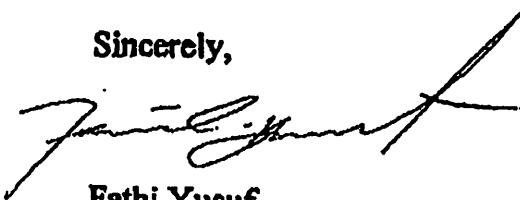
January 12, 2012

Mr. Mohamed Hamed,

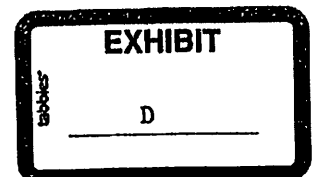
During the month of September 2009, I had a discussion with your son Wally, and within two days I repeat the same request while you were present that United Corporation would like to have its location back. Unfortunately, up to now, I have not seen that you give up the keys.

Therefore as of January 1, 2012 the rent will be \$200,000.00 per month, only for the coming three months. If you do not give up the keys before the three months, it will be \$250,000.00 per month until further notice.

Sincerely,



Fathi Yusuf



FY 004000

**UNITED CORPORATION**  
**4C & 4D Sion Farm**  
**St Croix, USVI 00821**  
**Phone (340) 778-6240**

**January 19, 2012**

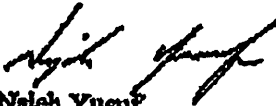
**Mr. Mohamed Hamed,**

Based on my father's phone call this morning, yesterday's letter (Jan 12, 2012) should read as follows; "During the month of September 2010 (not 2009)... I had a discussion with your son Wally, and within two days I repeat the same request while you were present that United Corporation would like to have its location back. Unfortunately, up to now, I have not seen that you give up the keys".

"Therefore as of January 1, 2012 the rent will be \$200,000.00 per month, only for the coming three months. If you do not give up the keys before the three months, it will be \$250,000.00 per month until further notice".

I am sorry for the error, he was hurrying to catch a plane.

Sincerely,



Najeh Yusuf  
for Rethel Yusuf

CC: Wally Hamed

United Corporation  
4-C & 4-D Estate Sion Farm  
P.O. Box 763  
Christiansted, VI 00820

Date: January 19, 2012

**\*\*VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED\*\***

Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, V.I. 00820

Re: - **NOTICE & CONFIRMATION OF INCREASED RENT FOR PLAZA EXTRA -  
SION FARM - FOR THE PERIOD OF JANUARY 1, 2012 THROUGH JUNE 30,  
2012.**

- **NOTICE OF LEASE TERMINATION FOR PLAZA EXTRA - SION FARM  
AS OF JUNE 30<sup>TH</sup>, 2012.**

Dear Mr. Hamed,

This notice is to confirm the increased rent for the above referenced premises. As you will know, I have given both you and your son Waleed Hamed oral notice in September 2010 to vacate the premises. At that time, I have advised you that the rent will increase to Two Hundred Thousand Dollars (\$200,000.00) per month for each of the first three months of January, February, and March, 2012. Thereafter, the rent shall increase to Two Hundred & Fifty Thousand Dollars (\$250,000.00) each month commencing April 1, 2012 through June 30<sup>th</sup>, 2012. The last date for this lease is June 30<sup>th</sup>, 2012. There will be no additional extensions of tenancy to Plaza Extra - Sion Farm.

An orderly inspection will be done to evaluate the condition of the premises. Kindly, advise as to when you are available to conduct an inspection, and to inventory all fixtures and improvements that will remain on the premises. Should you have any concerns regarding this notice, or any other matters concerning this lease, please ensure that same be made in writing.

Page | 1

FY 004002

and delivered by way of certified mail, return receipt requested to the address above. Thank you  
for your prompt attention in this matter.

Sincerely,

United Corporation

By:

  
Fathi Yusuf, CEO

**UNITED CORPORATION**  
**4C & 4D Sion Farm**  
**St. Croix, USVI 00821**  
Phone (340) 778-6240

August 1, 2014

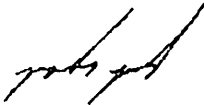
Fathi Yusuf  
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra – East as of August 1, 2014**

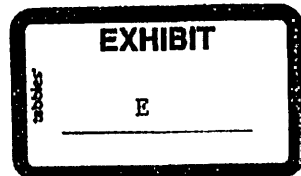
Rent due for Plaza Extra – East January 1, 2012 through July 31, 2014	Balance Due	\$8,817,199.52
1% interest on outstanding Balance	Amount Due	\$ <u>88,172.00</u>
		\$8,905,371.52
August 2014 rent currently due:		<u>\$250,000.00</u>
Total Balance due august 1, 2014		<u>\$9,155,371.52</u>

Please forward a check immediately.

Sincerely,

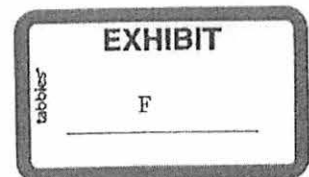


Maher Yusuf



UNITED CORPORATION  
**PLAZA EXTRA**  
 U S VIRGIN ISLANDS  
 PHONE 340-719 1870 FAX: 340 719 1870

Plaza Extra TuTu Park Mall Sales From 01-01-2012 To 12-31-2012	31,075,735.56	
Less 10,000 SQ.FT Build Area by Plaza	(5,157,798.43)	
Leased Area Of 50,250 SQ.FT.	<u>25,917,937.13</u>	A
Total Amount Paid to TuTu Park	495,877.27	
Parking Lot Cleaning	18,000.00	
Total Cost Of Rent & Parking	<u>513,877.27</u>	B
B/A Rent	<u>1.982708992%</u>	C
Plaza East Sales	35,931,601.41	
Pharmacy Rent 3,000 Monthly	36,000.00	
Total Sales & Rent	<u>35,967,601.41</u>	
Less Pharmacy Sales	(515,701.87)	
Net Sales Plaza East In 2012	<u>35,451,899.54</u>	D
Rent Due IN 2012 :		
D X C	<u><u>702,908.00</u></u>	



UNITED CORPORATION  
**PLAZA EXTRA**  
 U.S. VIRGIN ISLANDS  
 PHONE: 340-719-1870 FAX: 340-719-1874

Plaza Extra TuTu Park Mall Sales From 01-01-2013 To 12-31-2013	30,383,544.66	
Less 10,000 SQ.FT Build Area by Plaza	(5,042,911.98)	
Leased Area Of 50,250 SQ.FT.	<u>25,340,632.68</u>	A
Total Amount Paid to TuTu Park Parking Lot Cleaning	462,673.60 18,000.00	
Total Cost Of Rent & Parking	<u>480,673.60</u>	B
B/A Rent	<u>1.896849246%</u>	C
Plaza East Sales	34,938,818.47	
Pharmacy Rent 3,000 Monthly	<u>36,000.00</u>	
Total Sales & Rent	34,974,818.47	
Less Pharmacy Sales	<u>(486,569.56)</u>	
Net Sales Plaza East in 2013	<u>34,488,248.91</u>	D
Rent Due IN 2013 :		
D X C	<u><u>654,190.09</u></u>	



### CHRONOLOGY OF RENTS

Timeline	Bay 1	Bay 5	Bay 8
1986	Paid as of December 31, 1993	Not Utilized	Not Utilized
1987	Paid as of December 31, 1993	"	"
1988	Paid as of December 31, 1993	"	"
1989	Paid as of December 31, 1993	"	"
1990	Paid as of December 31, 1993	"	"
1991	Paid as of December 31, 1993	"	"
1992	Paid as of December 31, 1993	"	"
1993	Paid as of December 31, 1993	"	"
1994	Unpaid - Due	Beginning May 1, 1994 - Unpaid - Due	Beginning May 1, 1994 - Unpaid - Due
1995	Unpaid - Due	Unpaid - Due	Unpaid - Due
1996	Unpaid - Due	Unpaid - Due	Unpaid - Due
1997	Unpaid - Due	Unpaid - Due	Unpaid - Due
1998	Unpaid - Due	Unpaid - Due	Unpaid - Due
1999	Unpaid - Due	Unpaid - Due	Unpaid - Due
2000	Unpaid - Due	Unpaid - Due	Unpaid - Due
2001	Unpaid - Due	Thru July 31, 2001 Unpaid - Due [Balance Due for this period: \$271,875.00]	Unpaid - Due
2002	Unpaid - Due	Not Utilized	Thru Sept. 30, 2002 Unpaid - Due [Balance Due for this period: \$323,515.63]
2003	Unpaid - Due	"	"
Jan. 1, 2004- May 4, 2004	Unpaid - Due [Balance Due for this period: \$3,999,679.73]	"	"
May 4, 2004- Dec. 31, 2004	Paid as of February 7, 2012	"	"
2005	Paid as of February 7, 2012	"	"
2006	Paid as of February 7, 2012	"	"
2007	Paid as of February 7, 2012	"	"
2008	Paid as of February 7, 2012	"	Beginning April 1, 2008- Unpaid - Due
2009	Paid as of February 7, 2012	"	Unpaid - Due
2010	Paid as of February 7, 2012	"	Unpaid - Due
2011	Paid as of February 7, 2012	"	Unpaid - Due
2012	Unpaid - Due*	"	Unpaid - Due
2013	Unpaid - Due*	"	Thru May 30, 2013 Unpaid - Due [Balance Due for this period: \$198,593.44]
January 1, 2014 - Present	Unpaid - Due* [Balance Due for this period (excluding increased rent): \$1,696,362.61]	"	"
Subtotal:	\$5,696,042.34	\$271,875.00	\$522,109.38
<b>TOTAL DUE:</b>	<b>Bay 1, 5 and 8: \$6,490,026.72</b>		

tables  
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# **EXHIBIT 5**



attached Exhibit B shows how the calculations have been done, and to which everyone agreed to by issuing a check in the amount of \$5,408,806.74. Therefore, the monthly rate of \$58,791.38 is what the current monthly rent is.

7. For the period of January 1, 1994 through May 4<sup>th</sup>, 2004, there is rent outstanding in the amount of \$3,999,679.73 (69,680 Sq. Ft. of Retail Space @ \$5.55 sq. ft.). This reflects a rental period of 10 Years & 125 days. The rate of \$5.55 sq. ft. has always been significantly below market value.
8. United did not make a demand for the rent for the period of January 1, 1994 through May 4<sup>th</sup>, 2004 because records concerning the exact months that rental period began and ended were in the possession of the Federal government. Plaintiff knows well these records are in the possession of the federal government, and has never made any objections or denied that no agreement existed regarding the payment of rents.
9. It is respectfully requested that an Order permitting United withdraw the back rent of \$5,234,298.71 the value of all rents due for Bay 1.
10. As the fee simple owner of United Shopping Plaza, Defendant United is also entitled to repossess the premises immediately as a result of Plaintiff's bad faith refusal to allow United to withdraw rents at a rate that has already been agreed on.
11. Whether the court declares this to be partnership, a business agreement, or any other legal entity, the rent due must be paid, and there can be no excuse for failure to pay any rent.

Date: 9-5-2013



Fathi Yusuf

# **EXHIBIT 6**

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  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE  
FRAUDULENT TRANSFERS

DUDLEY, TOPPER  
AND FEUERZEIG, LLP

1000 Frederiksberg Gade  
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**RESPONSE TO HAMED'S  
INTERROGATORIES 2 THROUGH 13 OF 50 - NEW CLAIM NUMBERS:  
Y-8, H-1, H-23, H-19, H-33, H-34, H-37, H-144, H-145, H-155, H-156, H-158 & H-160**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Responses to Interrogatory 2 through 13 of 50 as to New Claim Numbers: Y-8, H-1, H-23, H-19, H-33, H-34, H-37, H-144, H-145, H-155, H-156, H-158 & H-160.

**GENERAL OBJECTIONS**

Defendants make the following general objections to the Interrogatories. These general objections apply to all or many of the Interrogatories, thus, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Request to Admit. The assertion of the same, similar, or additional objections in the individual responses to the Interrogatories, or the failure to assert any additional objections to a discovery request does not waive any of Defendants' objections as set forth below:

(1) Defendants object to these Interrogatories to the extent they may impose obligations different from or in addition to those required under the Virgin Islands Rules of Civil Procedure.

(2) Defendants object to these Interrogatories to the extent that they use the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Defendants object to these Interrogatories to the extent they seek information which is protected by the attorney-client privilege or work-product doctrine, including

information prepared in anticipation of litigation, or for trial, by or on behalf of Defendants or relating to mental impressions, conclusions, opinions, or legal theories of their attorneys or representatives, or any other applicable privilege or doctrine under federal or territorial statutory, constitutional or common law. Defendants' answers shall not include any information protected by such privileges or doctrine, and documents or information inadvertently produced which includes such privileged information shall not be deemed a waiver by Defendants of such privilege or doctrine.

(4) Defendants object to these Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence.

(5) Defendants object to these Interrogatories to the extent that they use terms or phrases that are vague, ambiguous, or undefined. Defendants' response to such request will be based upon their understanding of the request.

(6) Defendants object to these Interrogatories to the extent they seek documents or information not in the possession, custody or control of Defendants, on the grounds that it would subject them to undue burden, oppression and expense, and impose obligations not required by the Virgin Islands Rules of Civil Procedure.

(7) Defendants have not completed either their discovery or preparation for trial of this matter. Accordingly, Defendants' responses to these Interrogatories are made without prejudice to their right to make any use of, or proffer at any hearing or at trial evidence later discovered, and are based only upon information presently available. If any additional, non-



privileged, responsive information is discovered, these Interrogatories will be supplemented to the extent that supplementation may be required by the Virgin Islands Rules of Civil Procedure.

(8) Defendants object to these Interrogatories to the extent that they are compound and not a single Request. Hence, these Interrogatories should be counted as more than a single Request such that when all of the subparts are included together with other Interrogatories they exceed the 50 Interrogatories allowed in the Joint Discovery and Scheduling Plan ("JDSP").

### RESPONSES TO INTERROGATORIES

**Interrogatory 2 of 50 – New Claim Number Y-08 – Old Claim #: Y's III.F**

#### **Water Revenue Owed United**

Describe in detail, by month, from Sept 17, 2006 to 2014, the amount of water sold to the Partnership, by whom it was sold, the number of gallons per month, the per gallon cost in each of those months, the total value of the gallons sold by month, year and total amount – and describe any ledgers, shipping invoices, receipts or other documents which support your claim as well as any witnesses who would have knowledge and what knowledge you believe they have.

#### **RESPONSE:**

Defendants first object that this Interrogatory is unclear as it requests information about water sold "to the Partnership." United's claim against the Partnership is that the Partnership sold United's water from the Plaza Extra-East location. After May 5, 2004, the proceeds from the sale of United's water were to be paid to United, not the Partnership. Nonetheless, in an effort to respond to what appears to be questions relating to the support and calculations for water sales due to United from the Partnership, Defendants submit that the calculations set forth Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2006 ("Yusuf's Claims") were based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) for an average of \$5,291.66 per month. As Waleed Hamed was in charge of the Plaza

Extra-East location where the sales took place, Yusuf will be seeking additional information from him as part of the written discovery propounded on him. The number listed in the claims was the average monthly sales multiplied by 131 months demonstrating that United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015. Yusuf submits that discovery is on-going and that he will supplement this response as and when appropriate.

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**Interrogatory 3 of 50 – New Claim Number H-001-- Old Claim #: 201**

**Reimbursement for sale of the Dorthea condo**

Describe what was sold and to whom, as well as each payment received for the sale of that stock -- with particularity. For each such payment, this will include but not be limited to payor, receiving party, amount, where deposited, present location of funds and what amount, if any, of this was given to any member of the Hamed family. 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:**

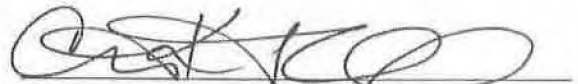
Defendants object to this Interrogatory as it is vague, ambiguous and involves a transaction occurring prior to the Accounting Order limiting claims between the Partners to those prior to September 17, 2006.

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 15<sup>th</sup>, 2018

By:



**CHARLOTTE K. PERRELL**

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**CERTIFICATE OF SERVICE**

It is hereby certified that on this 5<sup>th</sup> day of May, 2018, I caused the foregoing a true and exact copy of the foregoing **RESPONSE TO HAMED'S INTERROGATORY 2-13 OF 50 AS TO CLAIM H-143** to be served upon the following via Case Anywhere docketing system:

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