

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants/Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

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

vs.

UNITED CORPORATION, *Defendant.*

Consolidated with

Case No.: SX-2014-CV-287

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

vs.

FATHI YUSUF, *Defendant.*

Consolidated with

Case No.: SX-2014-CV-278

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

Consolidated with

Case No.: ST-18-CV-219

FATHI YUSUF, *Plaintiff,*

vs.

ESTATE OF MOHAMMAD A. HAMED,

Defendant.

Consolidated with

Case No.: ST-17-CV-384

**HAMED'S OPPOSITION TO UNITED'S MOTION FOR SUMMARY JUDGMENT RE
CLAIM Y-5: UNITED SHOPPING CENTER'S GROSS RECEIPT TAXES**

I. Introduction

This is a claim by United to recoup from the Partnership \$60,586.96 that United Shopping Center paid out for **its own** gross receipt taxes ("GRT") from 1993 through 2001. Again, this is United trying to get the Partnership to pay its own, unrelated past GRT. The United Corporation's Shopping Center (handled through the bank account called the "tenant account") is a completely separate entity that has no relation to the Partnership. Yusuf family members are the sole shareholders of the United Corporation and its Shopping Center.

Plaza Extra East is located in the United Shopping Center. The United Corporation owns the building where the Partnership's Plaza Extra East grocery store is located. Fathi Yusuf, one of the shareholders of the United Corporation, alleged that prior to 1986, Mohammad Hamed entered into an oral contract that the Partnership would pay the gross receipts on all **non-Partnership rents** collected by the United Shopping Center in exchange for a "very, very low, \$3 a square foot" rental rate and the ability to deduct the depreciation of the entire Shopping Center on the Partnership's annual taxes. Mr. Hamed was deposed and was never asked about nor did he ever testify as to such an agreement.

This claim is should be denied for three distinct procedural reasons—1) United did not file its claim within the timeframe required by Judge Brady's January 9, 2015 Wind Up Order and the Special Master's August 31, 2016 directive; 2) the claim is untimely under Judge Brady's July 25, 2017 *Order re Limitations on Accounting*, which bars claims occurring prior to September 17, 2006; and 3) United's claim is outside of the normal statute of limitations. Additionally, Fathi Yusuf's statement that there was an alleged agreement on Mohammad Hamed's behalf to pay United's Shopping Center gross receipt taxes also fails: 1) a mere assertion of a contrary statement (that there was an agreement between the Partners) without supportive facts does not create a genuine dispute as to a material fact; 2) Yusuf's assertion

of an oral contract that the Partnership would pay the United Shopping Center's gross receipt taxes is belied by how the Partners actually acted with respect to this so-called agreement; and
3) no historical pattern or course of dealings shows that the Partnership intended to pay for the Yusuf family-owned United Shopping Center's gross receipt taxes.

II. Hamed's Counter-Statement of Facts (HCSOF)

1. The United Shopping Center is owned wholly by the United Corporation, a Yusuf family-owned corporation. (**Group Exhibit 1**)

Alleged Agreement between Fathi Yusuf and Mohammad Hamed

2. Fathi Yusuf testified that he and Mr. Mohammad Hamed agreed that the Partnership would pay for the gross receipt taxes ("GRT") of the Yusuf family-owned United Shopping Center before the Partnership came into existence in 1986. Neither Fathi Yusuf nor the United Corporation produced documentation substantiating this alleged agreement or any reference to it in any document, accounting or communication. (**United Exhibits** generally.)

Q. [Ms. Perrell] So when I say United, I'm talking about United that is your family's entity that owns real estate and the shopping center and so forth.

* * * *

Q. [Ms. Perrell] . . . Has United made a claim in this lawsuit --

A. [FATHI YUSUF] Yes.

Q. -- to recover gross receipts that has been paid by the United on behalf of receipts from tenants that United believes should have been paid by the partnership?

A. It should have. That's the agreement between me and Mr. Mohammad Hamed, is the rent, it was very, very low, \$3 a square foot. . . .

* * * *

Q. [Mr. Hartmann]. . . Let's talk a little bit about the original deal back with you and Mr. Mohammad Hamed, okay? Back when -- when you say that you agreed about gross receipts tax and insurance, that you weren't going to pay it, okay?

When was that? Do you remember, was that like in 1986 when you first started?

A. [FATHI YUSUF] Before 1986.

Q. Before there was a partnership --

A. Yes. (**Exhibit 2**)

3. According to Fathi Yusuf, Mohammad Hamed **did not** agree to have the Partnership pay the gross receipt taxes of the United Shopping Center. Rather, Fathi Yusuf testified in his

2020 deposition that Mr. Mohammad Hamed did **not** specifically agreed to have the Partnership pay the gross receipt taxes for the Yusuf family-owned United Shopping Center, rather “[w]hat he [Mr. Hamed] said, he never say nothing. Whatever I say goes. And he [Mr. Hamed] accepted it.”

Q. [Mr. Hartmann]. . . . Let's talk a little bit about the original deal back with you and Mr. Mohammad Hamed, okay? Back when -- when you say that you agreed about gross receipts tax and insurance, that you weren't going to pay it, okay? When was that? Do you remember, was that like in 1986 when you first started?
A. [FATHI YUSUF] Before 1986.

Q. Before there was a partnership --
A. Yes.

* * * *

Q. Tell me a little bit about how that took place. Like, if you remember kind of like what he said and what you said.

A. What he said, he never say nothing. Whatever I say goes.

* * * *

A. And he accepted it. (**Exhibit 2**)

Later in his deposition in 2020, Mr. Yusuf reiterated the fact that Mr. Mohammad Hamed never said anything in response to any such alleged agreement that the Partnership would pay for the United Shopping Center's gross receipt taxes.

Q. [Mr. Hartmann]-- you said to him, The grocery store's got to pay the receipts, not only for the grocery store, but also for my -- what your lawyer called the part of United that is just the Yusuf, I'll call it Yusuf's United. So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?

A. [FATHI YUSUF] Um-hum.

Q. And you said that you told him that?

A. Yeah.

Q. And he never said anything?

A. He never said. And then I explain to him. (**Exhibit 2**)

4. It is undisputed that no one other than Fathi Yusuf has testified that there was an agreement between Yusuf and Mohammad Hamed to have the Partnership pay the GRTs of the United Shopping Center. For example, Waleed “Wally” Hamed said his father did not tell him of such an agreement and he was unaware that this agreement existed.

[Ms. Perrell]. . . .The first question I have is, were you aware of the agreement between Mr. Fathi Yusuf and your father, Mohammad Hamed, that Mr. Yusuf

testified to that the grocery store operations, the partnership, would ultimately pay all of the gross receipts for the shopping center? Were you aware of that?

A. [WALLY HAMED] No.

* * * *

Q. [Ms. Perrell]. . . . Did you have any conversations -- so if you weren't aware of it, that means you also, just to clarify, didn't discuss that issue with your father, correct?

A. [WALLY HAMED] That's correct. (**Exhibit 2**)

5. It is undisputed that Maher "Mike" Yusuf, Fathi Yusuf's oldest son and current President of the United Corporation, did not know of the alleged agreement between his father and Mohammad Hamed to have the Partnership pay the GRTs of the United Shopping Center.

[Ms. Perrell]Did you have any conversations with your father prior to the time that he went over to St. Thomas about how the gross receipts issues were supposed to be resolved with the shopping center?

A. [MAHER YUSUF] No.

* * * *

Q. . . . All right. And when you issued the check, did you have any idea whether there had already been a prior arrangement between your father and Mr. Hamed?

A. No, I didn't know the details back then. (**Exhibit 2**)

6. It is undisputed that Mufeed "Mafi" Hamed, who worked in the Plaza Extra East store, did not know of the alleged agreement between his father and Fathi Yusuf to have the Partnership pay the GRTs of the United Shopping Center. Further, Mafi Hamed stated that his father would have told him had such an agreement existed because his father discussed everything owed to Mr. Yusuf with him and his brothers.

Q. [Ms. Perrell]. . . .You're not aware -- you were not present during the meeting that Mr. Yusuf had with Mr. Mohammad Hamed, your father, that he testified about earlier regarding how the gross receipts for the shopping center were to be paid; isn't that correct?

A. [MAFI HAMED] Yeah, that's correct, but just because he says it, that doesn't mean it's true.

Q. But you weren't present for the conversation, sir, you don't know, correct?

A. No, I don't know.

Q. . . .All right. And you never discussed that with your father, correct?

A. No. My father would discuss everything that was owed to Mr. Yusuf and we would know about it.

* * * *

A. [MAFI HAMED] He wouldn't keep anything out. He wouldn't have these secret meetings. He wouldn't have any of these other situation. My father's an honorable man. He's an honest man, and he was to his word. **(Exhibit 2)**

Rationale for Partnership to Pay United Shopping Center's GRTs & Property Insurance

7. Mr. Yusuf testified in his January 21, 2020 deposition that in the beginning of the Partnership he told Mr. Hamed that he would rent the space for the Plaza Extra East store to the Partnership for a low rate of \$3 per square foot. In exchange for that rental rate, Mr. Yusuf stated that the Partnership would allegedly have to pay for the Yusuf family-owned United Shopping Center's gross receipt taxes and insurance.

Q. [Ms. Perrell] So when I say United, I'm talking about United that is your family's entity that owns real estate and the shopping center and so forth.

* * * *

Q. [Ms. Perrell] . . . Has United made a claim in this lawsuit --
A. [FATHI YUSUF] Yes.

Q. -- to recover gross receipts that has been paid by the United on behalf of receipts from tenants that United believes should have been paid by the partnership?

A. It should have. That's the agreement between me and Mr. Mohammad Hamed, is the rent, it was very, very low, \$3 a square foot. . . .

* * * *

A. [FATHI YUSUF] . . . I know we're going to face a project in the millions, at least \$3- to \$4 million. And I know my brother-in-law have nothing beside what he save, 400,000. So for us to go into a big business way above our financial capacity, we have no choice but to hit a lending institute. And from experience, nobody will lend any money without taking United Shopping Center as a collateral, and the house, and the owner personal financial guarantee. And based on that, I say, Listen, I am giving you this \$3 a square foot, but I'm not paying no insurance, I'm not paying no gross receipt. The store have to take care of it. **(Exhibit 2)**

8. Contrary to Fathi Yusuf's deposition testimony on January 21, 2020, on April 27, 2015, Judge Brady made a factual finding in his Order that rent from 1986-2004 was charged at \$5.55 per square foot for the Plaza Extra East store. (That would invalidate any such agreement if it existed.)

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 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. *Hamed v. Yusuf*, SX-12-CV-370, 2015 V.I. LEXIS 155, at *11 (V.I. Super. Ct. Apr. 27, 2015)

9. On January 21, 2020, Mr. Yusuf also testified to another alleged trade-off for the agreement that the Partnership would pay the gross receipt taxes and property insurance for the Yusuf family-owned United Shopping Center. In exchange for paying the gross receipt taxes for the Yusuf family owned United Shopping Center, the Partnership would get the full depreciation of the United Shopping Center on its taxes.

Q. [Mr. Hartmann]-- you said to him, The grocery store's got to pay the receipts, not only for the grocery store, but also for my -- what your lawyer called the part of United that is just the Yusuf, I'll call it Yusuf's United. So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?

A. [FATHI YUSUF] Um-hum.

Q. And you said that you told him that?

A. Yeah.

Q. And he never said anything?

A. He never said. And then I explain to him.

* * * *

A. All my building depreciation, two-and-a-half --two-and-a-half, \$3 million, it being wiped out, credit, to the income of this partnership. So Mohammad Hamed, he getting depreciation on something that he don't even own.

Q. . . .Could you use a depreciation at the time?

A. Sure.

Q. Did you have enough income?

A. Yeah.

* * * *

A. All the -- my building value, it being wiped out completely to the partnership.
(Exhibit 2)

10. In an earlier deposition, on April 2, 2014, Fathi Yusuf testified under oath that he and Mr. Hamed were partners, but there were a lot of conditions Mr. Hamed had to agree to as a basis of that partnership. Mr. Yusuf stated that "I have the final word," with respect to the Partnership. Mr. Yusuf explained that the United Corporation was supposed to have an office free of charge in the supermarket and the Partnership would pay all of the gross receipts and insurance for the entire building of the United Shopping Plaza. Yusuf explained it as a trade-off: The Partnership took the depreciation of the whole United Shopping Plaza

on its taxes in exchange for the Partnership paying the United Shopping Center's the gross receipts taxes and insurance.

[FATHI YUSUF] I have, with this gentleman, a shake-hand commitment, and I live up to it up to now, just to show you how clean I am and how decent I am, this man never have my signature as a partner, but I have never deny him as a partner in the profit. But there is a lot of condition, he have to live up to it.

* * * *

[Attorney Holt] Are there some other conditions to this partnership agreement?
A. [FATHI YUSUF] No. The condition is, I have the final word. It's I am obligated to consult with him, if I see it's important for me to consult. I was suppose to be, after 1993, I was supposed to have an office within the supermarket free of charge. I was -- he was supposed to, the Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza.

My duty was, is to go and commit the same thing we ensure, to bring money to Mr. Hamed an extent, which cost him nothing. It cost me personal guarantee, and it costing me everything I own except my children and my wife.

* * * *

Q. Okay. So the Plaza Extra stores would pay for insurance on the whole shopping center?

A. Yes.

Q. And the Plaza Extra Supermarket would pay the gross receipts, not just on the grocery store profits, but on the rent?

A. Yes.

* * * *

A. . . . One more item. The United Shopping Plaza was using the entire shopping center value depreciation to offset any income tax, which that, in return, it will give you greater saving than the insurance and the gross receipt.

Q. So there's a tradeoff you're giving them --

A. It's a tradeoff, yes.

Q. You're giving them depreciation; they're paying gross receipts and insurance?

A. Yes. Yes, sir. (**Exhibit 3**)

11. Fathi Yusuf and the United Corporation have not provided any evidence that the Partnership got the depreciation value of the United Shopping Center on its taxes from 1993-2001, the time period of this claim. (**United Exhibits** generally)

1986-1992 Payment of United Shopping Center's GRTs

12. From 1986 to 1992, Fathi Yusuf testified in his 2020 deposition that the Partnership paid for the Yusuf family-owned United Corporation Shopping Center's gross receipt taxes.

Q. [Ms. Perrell] How did the gross receipts tax for the shopping center get paid from 19 -- 1986 until the time of the fire?

A. [FATHI YUSUF] It's being paid by the -- by the partnership.

* * * *

Q. [Mr. Hartmann]. . . . And who -- and who -- after you opened up in '86, who took -- physically took care of the taxes? Who wrote the check, et cetera?

A. Write the check, sometime I write it. Sometime Wally write it.

Q. Wrote the check?

A. Yeah. (**Exhibit 2**)

13. Fathi Yusuf contradicted his own testimony. In an earlier deposition in 2014, Yusuf testified that the Partnership was not supposed to be paying the United Shopping Center's GRTs until 1994.

[Attorney Holt] Are there some other conditions to this partnership agreement?

A. [FATHI YUSUF] No. The condition is, I have the final word. It's I am obligated to consult with him, if I see it's important for me to consult. I was suppose to be, after 1993, I was supposed to have an office within the supermarket free of charge. I was -- he was supposed to, the Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza. (**Exhibit 3**)

14. It is also undisputed that Wally Hamed did not write Partnership checks for the 1986 to 1992 United Shopping gross receipt taxes because he testified in his deposition that he did not have checking writing authority until 1994 on the Partnership's Plaza Extra accounts.

Q. [Ms. Perrell]. . . . And so before Mr. Yusuf left, did you have anything to do with the writing of any checks for the gross receipts, either for the grocery store operations, or any other gross receipts taxes?

A. [WALLY HAMED] Like I told you, I had nothing to with the shopping center whatsoever. And as far as me signing checks, we opened Plaza Extra East in 1986. I didn't have any signing check -- I mean, I had no authority to sign checks. Fathi was the only one who signed the checks --

* * * *

A. -- for the Plaza Extra East.

Q. [Ms. Perrell] When was it you were given authority to sign checks?

A. [WALLY HAMED] Sometime probably 3-4 years after that.

Q. . . . So would that be early '90s?

A. I'm not sure. I think probably after we moved to St. Thomas, or right after we moved to St. Thomas.

Q. . . . Because at that point, Mr. Yusuf would be gone and somebody would need to do it on behalf of the East store?

A. I believe around that time, yes.

Q. . . . So that makes sense. . . .

Q. (Mr. Hartmann) And just for the record, what was the date of that?

A. The date of?

Q. When you opened St. Thomas.

A. St. Thomas, I believe it's in '94. (**Exhibit 2**)

1993-2001 Payment of United Shopping Center's GRTs

15. From 1993 through August 2001, the United Corporation Shopping Center paid its own gross receipt taxes on the proceeds of its rents out of its tenant bank account. (See **United Exhibit 3-6**)

16. Fathi Yusuf left the St. Croix store at the end of 1992 to work in the newly opened Plaza Extra store in St. Thomas. Mr. Yusuf testified that between 1993 and 2001, he assumed that the Partnership continued to pay the United Shopping Center's gross receipt taxes.

Q. [Mr. Hartmann]. . . . And -- and during that time [1986-1992], you had to -- even back in those days, you had to fill out a sheet, right, for the gross receipts tax every month?

A. [FATHI YUSUF] Yes.

Q. Yeah. And was -- did one of you, in particular, do it, or did whoever do it?

A. No, the man who collecting the rent. I don't collect rent. I used to have a manager.

* * * *

Q. . . . So you had a manager who filled out the tax forms --

A. Yeah.

Q. -- and then paid them?

A. Yes.

* * * *

A. He asked for a check and check would be written and give to him.

* * * *

Q. . . . And -- and did it stay that way from --from the time you opened until you left for St. Thomas in '92?

A. Yes.

* * * *

[Mr. Hartmann] So -- so when you moved to St. Thomas at the end of '92, did the taxes continue to get paid the same way? In other words, did your manager --

A. [FATHI YUSUF] I would assume so.

Q. . . . But you don't know?
A. I don't know. (**Exhibit 2**)

17. By way of example, Mr. Yusuf testified that the United Shopping Center paid its own gross receipt tax for the month of July 1999 out of its tenant bank account. He noted that his son Mike Yusuf and the Shopping Center's property manager signed the check for the GRT payment.

[Mr. Hartmann] . . . I'm showing the witness Exhibit F, which has been marked as Exhibit 3 for the purposes of this deposition, which previously the witness identified as his claim.

* * * *

Q. (Mr. Hartmann) And what I'm referring to is marked with a Bates Stamp Number Exhibit FY 015001.

* * * *

Q. (Mr. Hartmann) What I'm showing you is a check written on United Corporation Tenants Account.

A. [FATHI YUSUF] Um-hum, yes.

Q. The tenants' account, not -- not on the partnership account.

A. Yeah.

Q. And -- and it's Check Number . . . 1674, dated 8-27-99. And itself written to the Government of the Virgin Islands for gross receipts taxes for July. In the notation, it says July of '99. And it's accompanied by a -- by a form that was submitted with it.

* * * *

Q. [Mr. Hartmann]. . . And could you tell me whose signature appears on that check?

A. I believe this is my son, Mike.

* * * *

A. Maher Yusuf.

Q. And -- and do you recognize the signature -- the presented name and the signature on the form below it?

* * * *

Q. I think it says Thomas.

A. I don't know who's that.

Q. Thomas Luff.

A. I don't know. I don't know. I tell you, I'm in St. Thomas.

* * * *

A. That must be the manager of the shopping center.

Q. So this is a check from 1999 paying the gross receipts tax.

A. Um-hum.

Q. Written on the tenants' account, and it's signed by your son, Mike?

A. Right. (**Exhibit 2**)

2002-2012 Payment of United Shopping Center's GRTs

18. From about 2002 through 2012, sometimes the United Corporation paid its own gross receipt taxes on the rent proceeds from the United Shopping Center and sometimes the Partnership paid the United Shopping Center's gross receipts.

[Mr. Hartmann]. . . When I say you didn't know anything at all before 2012, you knew some stuff?

A. [JOHN GAFFNEY] I did.

Q. And, for instance, on this, you knew that some of the times, the partnership paid its own -- paid the tenants' account and sometimes the tenant paid the tenants' --

A. Yes.

Q. -- gross receipts taxes?

A. Yes. (**Exhibit 2**)

19. John Gaffney testified under oath in his deposition on January 21, 2020, that prior to his arrival in 2012, the predecessor controller, Margie Soeffing, tried to account for the taxes as a "due to/from item," but sometimes was pressured to expensing it. This meant that sometimes the United Shopping Center GRTs' payment was characterized on the Partnership's accounting as an item to be resolved at some point in the future as to which entity (Partnership or Shopping Center) should ultimately be responsible for paying it. Other times, the GRT payment for the United Shopping Center came out of the Partnership's bank account and the Partnership books reflected that the Partnership paid it straight out, in other words, it was a Partnership expense.

A. [JOHN GAFFNEY] Well, he [Fathi Yusuf] just told me that his agreement had always been that the gross receipts taxes for the shopping center were to be paid by Plaza. The -- the -- I will say that I had conversations with the former controller, Margie Soeffing, about that too, and she was under the -- she was under the same guideline.

* * * *

Q. [Mr. Hartmann]. . . So going back to my GAAP question again, you said that -- you said that you had no personal knowledge and that no documents in there, but that you could make some sort of statement about consistency. What statement could you make about consistency?

A. [JOHN GAFFNEY] Well, there was an effort to basically treat the payments that were being made on behalf of the shopping center gross receipts taxes as a due to/from item.

Q. . . . So if I understand what you're saying is they weren't trying to pay the tenant gross receipts taxes out of the partnership, or they were?

A. I -- I believe, and I'm going to just say I believe because I believe that Margie was trying to account for it as a due to/from item. And what was happening is occasionally it would come up and she would be pressured into expensing it.
(Exhibit 2)

20. Gaffney further testified in his January 21, 2020 deposition that the prior controller, Margie Soeffing, flip-flopped back and forth between sometimes classifying the Partnership's payment of the Yusuf family owned United Shopping Center's gross receipt taxes as a "due/to from item" meaning the responsible party for paying the GRTs would be determined at a later date and sometimes Ms. Soeffing just wrote the payment off—and the Partnership paid the United Shopping Center's GRTs—because Fathi Yusuf pressured her to do so.

Q. [Mr. Hartmann] And, for instance, on this, you knew that some of the times, the partnership paid its own -- paid the tenants' account and sometimes the tenant paid the tenants' --

A. [JOHN GAFFNEY] Yes.

Q. -- gross receipts taxes?

A. Yes.

* * * *

Q. [Mr. Hartmann]. . . . And what I'm asking is, and the only reason that came up, the only reason you were placed in that position is Mr. Hamed -- Mr. Yusuf told you that there was some old oral agreement that would have the partnership pay the tenant account's gross receipts tax; is that correct?

A. [JOHN GAFFNEY] That, plus the fact I did see some evidence of the same issue existing before 2000 -- I started the, you know, doing the conversion in January of 2013.

* * * *

Q. [Ms. Perrell] You said you saw some evidence. And that evidence was you had had some conversations with a lady that was the accountant. What was her name?

A. [JOHN GAFFNEY] Margie Soeffing.

* * * *

Q. (Ms. Perrell) You -- you spoke with her directly, right?

A. [JOHN GAFFNEY] I've spoke with her directly, yes.

Q. And as a result of that conversation, did you have an understanding how the tenant -- how the shopping center gross receipts were to be paid, at least what was --

A. Well, Margie -- Margie flip-flopped back and forth, and she admitted to it, to me that she did. And she did tell me that, you know, sometimes under pressure from Mr. Yusuf, she would start feeling like she needed to write it off, and then sometimes under, I don't know whether she was getting pressure from anybody else, I can't say specifically, but she would -- she did have a tendency to also try and treat it as a due to/from item, too.

Q. All right. So that you understood that there were folks that were treating it both ways?

A. Yeah. (**Exhibit 2**)

2013-2015 Payment of United Shopping Center's GRTs

21. On January 21, 2020, John Gaffney testified that Judge Ross told him to go ahead and pay the gross receipt taxes for the Yusuf family owned United Shopping Center with Partnership funds and the dispute could be settled later. Gaffney posted a journal entry and expensed the gross receipts for 2013-2015 in 2015.

Q. [Ms. Perrell]. . . .So as we sit here today, has the partnership paid for the United Shopping Center's gross receipt taxes from January of '13 forward until the split?

A. [JOHN GAFFNEY]. . . .And -- and ultimately what happened was in a meeting with Judge Ross, Mr. Yusuf and I, we spent quite a bit of time on this, and the point was argued about who was supposed to be incurring the cost of the shopping center. Judge Ross finally said, Okay. For our purposes right now, go ahead, and let's, you know, let's go ahead. I proposed a journal entry. I proposed a journal entry so that we could get these off the books. And then the point about the \$44,000 in the gross receipts taxes could be argued later. But ultimately what happened was, once I posted that journal entry, I expensed \$44,000 to taxes, gross receipts, and I did that in 2015. (**Exhibit 2**)

22. Gaffney explained in his January 21, 2020, deposition that by placing the payment of the Yusuf family-owned United Shopping Center GRTs in a due to/from account on the Partnership's accounting, the amount was accumulating to be resolved at a future point. In other words, the entity that was supposed to have paid the taxes would be determined later.

[Mr. Hartmann]. . . .You weren't there before 2012, were you?

A. [JOHN GAFFNEY] Arrived in October of 2012.

Q. . . .So you don't really have any idea what was done before then, do you?

A. I have some idea, because what happened was, when I arrived, they were about eight months or -- eight to ten months behind on their accounting. And so what happened was, I had discussions with Margie Soeffing, and we agreed, we -- we came to an agreement on how it would be brought current and so forth.

* * * *

Q. [Mr. Hartmann] And, for instance, on this, you knew that some of the times, the partnership paid its own -- paid the tenants' account and sometimes the tenant paid the tenants' --

A. [JOHN GAFFNEY] Yes.

Q. -- gross receipts taxes?

A. Yes.

* * * *

A. [JOHN GAFFNEY]. . . See, who -- who paid it and what account it came out of is irrelevant. It is the debit side that is --has the most relevance to me, because if the debit side is going to a due to/from account, it's entirely different than if the debt's going to an expense account called taxes, gross receipts. If it's going to a due to/from account, it's accumulating to be resolved at some future point. **(Exhibit 2)**

GAAP Accounting Principles Govern Accounting for Businesses

23. Mr. Gaffney testified that GAAP stands for generally accepted accounting principles and it covers the entire subject of accounting for businesses.

[Mr. Hartmann]. . . just tell me very briefly, what is GAAP?

A. [JOHN GAFFNEY] Generally accepted accounting principles.

Q. . . . And what is -- what is it used for?

A. Well, it covers basically the entire subject of accounting for businesses. . .

(Exhibit 2)

According to John Gaffney, Conformance with GAAP Requires Documentation or Consistency in Treatment of Over Time

24. According to John Gaffney, an appropriate GAAP accounting entry has documents backing up the accounting entry. For example, the repair of a refrigerator would include obtaining and retaining an invoice of the work from the repair person. That receipt could then be showed to the IRS, if necessary, to prove the expense was work related.

[Mr. Hartmann]. . . just tell me very briefly, what is GAAP?

A. [JOHN GAFFNEY] Generally accepted accounting principles.

Q. . . . And what is -- what is it used for?

A. Well, it covers basically the entire subject of accounting for businesses. . .

* * * *

Q. [Mr. Hartmann] If I was going to charge repairs to a refrigerator, I would get an invoice from the person who repaired it, that would go into my books. And later on, when the IRS or someone else came knocking, I would go back and show them that document to show why it was in there; is that correct?

A. [JOHN GAFFNEY] Correct, yes. **(Exhibit 2)**

25. Mr. Gaffney testified that an accounting entry without documentation could survive a GAAP audit if consistency in handling the item is established over the course of years or months.

Q. [Ms. Perrell]. . . And what was your understanding as to why the gross receipts for the shopping center, which was not part of the partnership, would be paid by the partnership?

A. [JOHN GAFFNEY] Just discussions with Mr. Yusuf over the agreement, the purported agreement that the shopping center gross receipts taxes are to be paid by the -- by Plaza Extra.

* * * *

Q. [Mr. Hartmann]. . . And is there any such document with regard to this agreement? That's all I'm asking.

A. [JOHN GAFFNEY] No.

* * * *

Q. [Mr. Hartmann]. . . And -- and would this -- would this -- would the documentation that you have with regard to this, survive an audit under GAAP?

A. [JOHN GAFFNEY] Yes, it could survive an audit under GAAP, based upon consistency, because sometimes agreements are made. They're not necessarily always in writing. And then what happens is if something has been handled a certain way for so many years and --

* * * *

A. -- so many months, it could -- it could be actually easily accepted. (**Exhibit 2**)

26. It is undisputed that no writing exists documenting the purported agreement between Fathi Yusuf and Mohammad Hamed that the Partnership would pay the United Shopping Center's GRTs.

[Mr. Hartmann]. . . just tell me very briefly, what is GAAP?

A. [JOHN GAFFNEY] Generally accepted accounting principles.

Q. . . . And what is -- what is it used for?

A. Well, it covers basically the entire subject of accounting for businesses. . .

* * * *

Q. [Mr. Hartmann] If I was going to charge repairs to a refrigerator, I would get an invoice from the person who repaired it, that would go into my books. And later on, when the IRS or someone else came knocking, I would go back and show them that document to show why it was in there; is that correct?

A. [JOHN GAFFNEY] Correct, yes.

Q. . . . And is there any such document with regard to this agreement? That's all I'm asking.

A. No. (**Exhibit 2**)

27. It is undisputed that the payment of the gross receipt taxes was not handled consistently on the Partnership's books:

- 1986-1992 – Mr. Yusuf alleged in his deposition testimony in 2020 that the Partnership paid the GRTs for the United Shopping Center. (HCSOF ¶ 12)
- 1986-1993 – In contrary deposition testimony in 2014, Mr. Yusuf stated “[t]he Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza.” (HSOF ¶ 13)
- 1993 to 2001 – the United Shopping Center paid its own GRTs from its tenant bank account. (HCSOF ¶ 15)
- 2002-2012 – Mr. Gaffney testified that the prior controller, Margie Soeffing, flip flopped back and forth between sometimes classifying the Partnership's payment of the Yusuf family owned United Shopping Center's gross receipt taxes as a “due/to from item,” to determine which entity owed the GRTs at a later date and sometimes Ms. Soeffing just wrote the payment off (meaning the Partnership paid it), because Fathi Yusuf pressured her to do so. (HCSOF ¶ 20)
- 2013-2015 – Mr. Gaffney testified that Judge Ross told him to go ahead and pay the gross receipt taxes for the Yusuf family owned United Shopping Center with Partnership funds and the dispute could be settled later. Mr. Gaffney posted the taxes as a “due/to from item” on the Partnership's books, signifying that determining which entity bore responsibility for the GRTs would be determined at a later date. (HCSOF ¶¶ 21-22)

28. On May 29, 2018, Hamed requested the Court's guidance regarding United's claim of “special” treatment, Hamed Motion for Court Assistance and Directions re Special Master

Ross's May 21st Order, *Hamed v Yusuf*, SX-12-CV-370 (May 29, 2018) at 2:

The thrust of this inquiry arises from the fact that each time Yusuf or United is found to have taken Partnership funds for their own uses, they argue that there was a “special arrangement” or an unwritten provision of the “Partnership Agreement” that allows this inequality.

Hamed argued in his motion that 26 V.I.C. § 44 requires that the partnership agreement dictates the terms of the partnership. When there is no written partnership agreement, 26 V.I.C. § 44 controls.

But, absent a written agreement, what are the “terms” of the partnership? Missing or unclear terms are supplied by the Act. See 26 V.I.C. § 44 (Effect of partnership agreement; nonwaivable provisions.)

- (a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. **To the extent the partnership**

agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership. (Emphasis added)(footnote omitted).

See, e.g., *Bunnell v. Lewis*, No. 05-92-02558-CV, 1993 WL 290781, at *5 (Tex. App. July 27, 1993), *writ denied* (Mar. 9, 1994) ("A partnership is an association of two or more persons to carry on a business for profit as co-owners. . . . In the absence of agreement on other terms, the Texas Uniform Partnership Act supplies the missing terms. See *Park Cities Corp. v. Byrd*, 534 S.W.2d 668, 672 (Tex. 1976).")

Fortunately, once a partnership is determined to exist, one partner cannot make up, "explain" or dictate the rights, relative authority and power of the partners -- as these are set by statute in the Virgin Islands:

26 V.I.C. § 71 Partner's rights and duties

* * * *

(f) Each partner has equal rights in the management and conduct of the partnership business. *Id.* at 4.

29. In a June 26, 2018 Order, Judge Brady noted that thus far in the case, "no findings have been made detailing with specificity the duties, responsibilities, benefits and obligations of each partner, including whether any benefits are due United and its shareholders during the period relevant to the issues and claims being addressed by the Master." Order re Special Master, *Hamed v Yusuf*, SX-12-CV-370 (June 25, 2018) at 2. To determine whether any benefits are due United and its shareholders, Judge Brady ordered that the following factors be considered: 1) the partners' agreements, 2) history and 3) course of dealing. *Id.* at 3.

III. Argument

United's motion for summary judgment with respect to claim Y-5—Gross Receipt Taxes ("GRT") should be denied for three distinct procedural reasons: 1) United did not file its claim within the timeframe required by Judge Brady's January 9, 2015 Wind Up Order and the Special Master's August 31, 2016 directive. 2) Even if it is assumed that United filed its claim within the requirements set forth by Judge Brady and Special Master, the claim is untimely under

Judge Brady's July 25, 2017 Order re Limitations on Accounting, which bars claims occurring prior to September 17, 2006. 3) United's claim is outside of the normal statute of limitations.

In addition to the three procedural reasons, United's claim should also fail because 1) no evidence supports Yusuf's assertion that there was an agreement between the Partners; 2) Yusuf's assertion of an oral contract that the Partnership would pay the United Shopping Center's gross receipt taxes is belied by how the Partners actually acted with respect to this so-called agreement; and 3) United is not entitled to any "special benefits" that would allow it to ignore the SOL.

A. United did not file its claims within the timeframe set forth by the Special Master

Pursuant to the "Final Wind Up Plan Of The Plaza Extra Partnership," entered on January 9, 2015 (the "Plan"), § 9, Step 6, and the August 31, 2016 directive of the Master, as clarified on September 22, 2016, any entity or party with a claim was required to submit that claim on or before September 30, 2016.

On September 30, 2016, Defendant/counterclaimant Fathi Yusuf ("Yusuf") submitted his Accounting Claims and Proposed Distribution Plan (the "Claim"). United did not do so. United claims that it has some rights or claims as a totally distinct third-party, unrelated to Fathi Yusuf's Partners' claims—but if that is so, Fathi Yusuf's September 30th, 2016 filing was not United's filing. United cannot have it both ways. Therefore, United did not bring its claim under the timeframe set forth by the Special Master.

B. United's claims are barred by Judge Brady's July 25th, 2017 Order re Limitations on Accounting

On July 25, 2017, Judge Brady limited claims to transactions that occurred on or after September 17, 2006.

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and

charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006. Order re Limitations on Accounting, *Hamed v Yusuf*, SX-12-CV-370 at 34 (July 25,2017)

Under Judge Brady's Order, United's claim is barred because all of the transactions in claim Y-5-Gross Receipt Taxes occurred in 2001 or earlier. (**United Exhibits 3-6**)

C. United's claims are barred by the Statute of Limitations (SOL) – 5 V.I.C. §31(3)

United also claims that it is not bound by Judge Brady's July 25th, 2017 SOL/laches Order because it is not one of the parties to the Partnership. If that is true, United is subject to the normal statute of limitations applicable to any civil litigant. Pursuant to 5 V.I.C. §31(3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years. It is undisputed that the SOL on all of these claims expired years ago, between the years 1999 and 2007, depending on the specific claim. Thus, United's Y-5 claim is barred by 5 V.I.C. §31(3).

D. Unsupported allegation of an "agreement"

Fathi Yusuf has not presented actual evidence, amounting to more than a scintilla, in support of his contention that there was an agreement between himself and Mr. Mohammad Hamed to have the Partnership pay the Yusuf family-owned United Shopping Center's gross receipt taxes.

In *Anderson v. American Federation of Teachers*, 67 V.I. 777, 789, 2017 V.I. Supreme LEXIS 48, at *16, 2017 WL 3332271 (V.I Mar 14, 2017), the Virgin Islands Supreme Court stated that when the burden shifts to the non-moving party to present contrary evidence, the non-moving party may "[n]ot rest on its allegations alone, but must present actual evidence, amounting to more than a scintilla," in support of its position. *Perez*, 59 V.I. at 527-28 (citation omitted)." *Accord, McCullough v. Mahally*, 3:17-cv-1780, 2020 U.S. Dist. LEXIS 8744, at *9, 2020 WL 279365 (M.D. Pa. Jan 17, 2020)("[t]he party adverse to summary judgment must raise

"more than a mere scintilla of evidence in its favor" and cannot survive Rule 56 scrutiny by relying on unsupported assertions, conclusory allegations, or mere suspicions"); *Woodward v. Norfolk S. Corp.*, 2012-UP-638, 2012 S.C. App. Unpub. LEXIS 798, at *3-4 (S. C. App. Dec 5, 2012)([a]s to yard vegetation damages, Woodward proffered as evidence her own speculative assertion that chlorine gas came in the direction of her property, located approximately 3.75 miles away from the site of derailment. See *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994)("[A]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial.")); and *Butters v. Valdez*, 149 Idaho 764, 770, 241 P.3d 7, 13, 2010 Ida. App. LEXIS 81, at *16-17 (Ida. App. Sept. 30, 2010)("[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment. (citation omitted)).

It is undisputed that no one, other than Fathi Yusuf, had "knowledge" of the purported agreement between Fathi Yusuf and Mohammad Hamed for the Partnership to pay the Yusuf family owned United Shopping Center's gross receipt taxes:

- Waleed Hamed had no knowledge of this purported agreement. He testified in his deposition that his father did not tell him of such an agreement. (HCSOF ¶ 4)
- Mike Yusuf, Fathi Yusuf's oldest son and current President of the United Corporation, as well as an employee of Plaza Extra East store from 1991-2000, did not have knowledge of the purported agreement. (HCSOF ¶ 5)
- Mafi Hamed, who worked in the Plaza Extra East store, did not know of the alleged agreement. Further, Mafi Hamed testified that his father would have told him had such an agreement existed because his father discussed everything owed with him and his brothers. (HCSOF ¶ 6)

Mr. Yusuf testified, and it is undisputed that Mohammad Hamed **did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center.** Yusuf testified in his 2020 deposition that Mr. Mohammad Hamed never agreed to have the Partnership pay the gross receipt taxes for the Yusuf family owned United Shopping Center, rather "[w]hat he

[Mr. Hamed] said, **he never say nothing**. Whatever I say goes. And he [Mr. Hamed] accepted it." (HCSOF ¶ 3) In an earlier 2014 deposition, Yusuf testified:

Q. [Mr. Hartmann. . . .So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?

A. [FATHI YUSUF] Um-hum.

Q. And you said that you told him that?

A. Yeah.

Q. And he never said anything?

A. **He never said**. And then I explain to him. . ." (HCSOF ¶ 3) (Emphasis added.)

No writings or other tangible evidence were produced by either Fathi Yusuf or the United Corporation that substantiated this alleged agreement. (HCSOF ¶ 2) John Gaffney, the controller for the Partnership and the United Corporation also testified that he had no documentation demonstrating this alleged agreement. (HCSOF ¶ 26) It is never referred to in any document, accounting or communication.

It is undisputed that Fathi Yusuf's "rationales" for why the Partnership would agree to pay the GRTs of the Yusuf family-owned United Shopping Center are also unsubstantiated. Fathi Yusuf alleged that one of the reasons the Partnership agreed to pay the gross receipt taxes of the United Shopping Center was

[t]he agreement between me and Mr. Mohammad Hamed, is the rent, it was very, very low, \$3 a square foot. . . .I [Fathi Yusuf] am giving you this \$3 a square foot, but I'm not paying no insurance, I'm not paying no gross receipt. The store have to take care of it." (HCSOF ¶ 7)

However, Judge Brady found as a matter of fact that the rent was actually \$5.55 per square foot:

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 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. (HCSOF ¶ 8)

Thus, from 1986-1994, the Plaza Extra East grocery store paid \$5.55 per square foot, not the \$3 per square foot Yusuf testified to under oath. That is the law of the case. Therefore, the Yusuf's first rationale is false: "the rent, it was very, very low, \$3 a square foot. . . ."

The second rationale Fathi Yusuf offered also is unsubstantiated. Yusuf stated that in exchange for the Partnership paying the gross receipt taxes of the United Shopping Center, the Partnership would be allowed to take the full depreciation of the United Shopping Center on the Partnership's taxes. (HCSOF ¶¶9-10) No documents or other evidence substantiating this depreciation were produced by Fathi Yusuf or the United Corporation. (HCSOF ¶ 11)

Finally, it is undisputed that there was no consistency in the manner of which entity paid the GRTs for the United Shopping Center, undercutting the existence of an agreement:

- 1986-1992: Fathi Yusuf testified that the Partnership paid for the Yusuf family owned United Corporation Shopping Center's gross receipt taxes. (HCSOF ¶ 12)
- 1986-1993: In an earlier deposition in 2014, Fathi Yusuf testified that "[t]he Plaza Extra [Partnership] was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza." (HCSOF ¶ 13) This undercuts Yusuf's assertion that the Partnership paid the Shopping Center's GRTs during that time.
- 1993-August 2001: The United Corporation Shopping Center paid its own gross receipt taxes from its tenant bank account. (HCSOF ¶¶ 15, 17)
- 2002-2012: sometimes the United Corporation paid its own gross receipt taxes and sometimes the Partnership paid the United Shopping Center's gross receipts. (HCSOF ¶ 18-20) As Mr. Gaffney testified about this time period, the prior controller, Margie Soeffing, flip-flopped back and forth between sometimes classifying the Partnership's payment of the Yusuf family owned United Shopping Center's gross receipt taxes as a "due/to from item" (meaning the entity responsible for the payment hadn't been determined) and sometimes Ms. Soeffing just wrote the payment off (meaning the Partnership paid it), because Fathi Yusuf pressured her to do so. (HCSOF ¶¶ 19-20)
- 2013-2015: John Gaffney testified that Judge Ross told him to go ahead and pay the gross receipt taxes for the Yusuf family owned United Shopping Center with Partnership funds and the dispute could be settled later. (HCSOF ¶¶ 21-22)

Thus, Mr. Yusuf has failed to provide "more than a mere scintilla of evidence" in support of establishing the alleged agreement between the Partners. (This is also a commercial

agreement, see discussion of new USVI Supreme Court decision on level of evidence in Hamed's companion Reply regarding the Merrill Lynch Accounts H-33.)

E. No Agreement to Have the Partnership Pay United's Gross Receipt Taxes

1. No consideration was given for the oral agreement

In *Castolenia v. Crafa*, ST-13-CV-243, 2014 V.I. LEXIS 1, at *7, 2014 WL 239427 (Sup. Ct. Jan. 15, 2014), the VI Superior Court articulated the standard for a valid contract:

The creation of a valid contract requires "a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." Consideration requires a performance or a return promise that has been bargained for. Where there is no mutual assent, or no meeting of the minds, there is no contract.

In this instance, there is no consideration. For example, Mr. Yusuf alleged that United gave the Plaza Extra grocery store a low rental rate of \$3.00 per square foot and in exchange for that rental rate the Partnership would pay the Yusuf-family owned United Shopping Center's gross receipt taxes and property insurance. (HCSOF ¶¶ 2, 7) It is the law of the case, however, that the rental rate for the Plaza Extra grocery store from 1986-2004 was \$5.55 per square foot, not the "very, very low, \$3 a square foot" that Mr. Yusuf testified to under oath in January 2020. (HCSOF ¶¶ 7-8)

Mr. Yusuf alleges that Mr. Hamed agreed to pay the United Shopping Center's gross receipt taxes in exchange for allowing the Partnership to take the depreciation value of the entire United Shopping Center on the Partnership's tax return. (HCSOF ¶¶ 9-10) United and Yusuf, however, have not provided any evidence that the Partnership did in fact get the depreciation value on its taxes. (See **United Exhibits** generally)

2. No evidence of an agreement

It is undisputed that Mr. Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center, even according to Fathi Yusuf. Yusuf

testified in his deposition that Mr. Mohammad Hamed never specifically agreed to have the Partnership pay the gross receipt taxes for the Yusuf family owned United Shopping Center, rather “[w]hat he [Mr. Hamed] said, he never say nothing. Whatever I say goes. And he [Mr. Hamed] accepted it.” (HCSOF ¶ 3)

It is undisputed that Wally Hamed, Mike Yusuf and Mafi Hamed, who all worked at the Plaza Extra East store, did not know about the agreement. (HCSOF ¶¶ 4-6) Further, Mafi Hamed testified that his father would have told him had such an agreement existed because his father discussed everything owed with him and his brothers. (HCSOF ¶ 6)

No documentary proof was offered to substantiate Yusuf's contention. No written agreement memorializing the oral contract was produced by Fathi Yusuf or the United Corporation.¹ (HCSOF ¶ 2) Further, Mr. Gaffney, the controller for the Partnership and the United Corporation, stated in his 2020 deposition testimony that he did not have a written agreement documenting the oral contract either. (HCSOF ¶ 26)

Thus, no corroborating testimony or documentary evidence was offered by Yusuf substantiating the alleged agreement between Yusuf and Hamed.

3. *Partners did not behave as if there were an agreement*

On June 26, 2018, Judge Brady issued an Order re Special Master, *Hamed v Yusuf*, SX-12-CV-370. Judge Brady noted that, thus far in the case,

[n]o findings have been made detailing with specificity the duties, responsibilities, benefits and obligations of each partner, including whether any benefits are due

¹ See *Penn v. Mosley*, 67 V.I. 879, 893, 2017 V.I. Supreme LEXIS 53, at *20-21 (V.I. Aug. 11, 2017) In particular, the Appellate Division noted that the magistrate's findings of fact established that an oral contract between Penn and Mosley was formed prior to Mosley's return to St. Thomas, thus establishing that the January 9, 2015 agreement was a written memorial of the terms of the prior oral contract. The written agreement's terms provide documentary evidence that corroborates Mosley's testimony.

United and its shareholders during the period relevant to the issues and claims being addressed by the Master. *Id.* at 2

To determine whether any benefits are due United and its shareholders, Judge Brady ordered that the following factors be considered: 1) the partners' agreements, 2) history and 3) course of dealing. *Id.* at 3.

Mr. Yusuf stated that the purported oral agreement between him and Mr. Mohammad Hamed occurred prior to the formation of the Partnership in 1986. (HCSOF ¶ 2) There is no corroborating testimony or documentary evidence supporting Mr. Yusuf's allegation of an oral agreement. (HCSOF ¶¶ 2-6, 26)

The purported rationales that Mr. Yusuf offered for the agreement—"the rent, it was very, very low, \$3 a square foot" and the Partnership could take the full depreciation of the United Shopping Center on its taxes—were not supported by any evidence. The rent for the Plaza Extra East store from 1986 to 1994 was \$5.55 per square foot. (HCSOF ¶ 8) Neither Yusuf nor United provided any documentation showing that the Partnership took the full depreciation of the United Shopping Center on its taxes. (HCSOF ¶ 11)

There is no evidence of a course of dealing or historical pattern to support Mr. Yusuf's contention either. For instance, Fathi Yusuf stated in his 2020 deposition that the Partnership paid the GRTs for the United Shopping Center from 1986 to 1992. (HCSOF ¶¶ 12) Yusuf and United did not provide any documentary evidence of such payments. In a 2014 deposition, Yusuf testified "[t]he Plaza Extra was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza," meaning the Partnership would not have paid the United Shopping Center's GRTs in 1986-1992. (HCSOF ¶ 13) Fathi Yusuf provided *contrary* evidence showing that the United Shopping Center did pay its own gross receipt taxes for 1993-August 2001 – Yusuf produced the gross receipt tax forms and cancelled checks. (HCSOF ¶ 15) For the time period of

September 2001-2012, Mr. Gaffney testified that sometimes the Partnership paid the United Shopping Center's GRTs and sometimes not. (HCSOF ¶¶ 18-20) For 2012-2015, Mr. Gaffney said he accounted for the Shopping Center's GRTs as a "due to/from" item on the Partnership accounting, meaning the party responsible for the payments would be determined at a later date. (HCSOF ¶¶ 21-22) Thus there were no course of dealings or historical patterns showing that the Partnership consistently paid the GRTs for the United Shopping Center.

IV. Opposition to United's Rule 56 Statement of Material Facts ("USOF")

United submitted its Rule 56 Statement of Undisputed Facts ("USOF") in Section III of its motion. Pursuant to V.I.R. Civ. P. 56 (c)(2)(B), Hamed admits USOF ¶¶ 3 and 5 for the limited purposes of this Opposition. The following USOF ¶¶ 1-2, 4 and 6-8 are disputed for the following reasons:

YSOF #1. When the partnership between Mr. Yusuf and Mohammad Hamed was formed in 1986, Mr. Yusuf knew and told Mr. Hamed that the partnership would have to borrow money in order to realize the objective of opening a supermarket in St. Croix, he knew that the lender would want his home as collateral for the loan, and would also insist on a personal guarantee, and he knew that he was the partner who would have to manage the supermarket. See **Exhibit 1**, January 21, 2020 Deposition, pp. 10, 21 (testimony of Fathi Yusuf).

Response: Yusuf provides no support for his contentions in YSOF #1. They are irrelevant in any event. Yusuf and Mr. Mohammad Hamed were Partners, period. As Fathi Yusuf stated in his September 25, 1999 affidavit "[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986."

YSOF #2. Mr. Yusuf and Mohammad Hamed agreed when the partnership was formed that it would be responsible for all of the gross receipt taxes or GRT to the Virgin Islands government, including the GRT from United's rental income and the GRT from store income. See Exhibit 1, p. 11 (testimony of Fathi Yusuf).

Response: Hamed disputes the statement that Mr. Mohammad Hamed made an agreement for the Partnership to pay the gross receipt taxes of the Yusuf family-owned United Shopping

Center. No one but Fathi Yusuf seems to think there was such an agreement. Yusuf's expectation that the Partnership would pay the Shopping Center's gross receipt taxes is pure fiction. See HCSOF ¶¶ 2-6 – Mr. Mohammad Hamed did not make the alleged agreement and did not testify to the alleged agreement. Waleed and Mafi Hamed and Mike Yusuf did not know of the alleged agreement either. See HCSOF ¶¶ 7-11 – none of the rationales Fathi Yusuf offered up for why the Partnership would pay the United Shopping Center's GRTs materialized. See HCSOF ¶ 12—no evidence to show the Partnership paid the United Shopping Center GRTs from 1986-1992 and HCSOF ¶ 13—Yusuf states the Partnership isn't supposed to start paying GRTs for the Shopping Center until 1994. Thus, there was no reason for Yusuf to believe that the Partnership would pay the Shopping Center's GRTs.

YSOF #4. From 1986 until the time of the fire that burned down the Plaza Extra East store and other bays at the shopping center, the partnership paid the GRT for rental income earned from tenants at the United Shopping Center. See Exhibit 1, p. 11 (testimony of Fathi Yusuf).

Response:

YSOF #6. Waleed Hamed was placed in charge of the Plaza Extra East store when it reopened,¹ and Mr. Yusuf expected and believed that the partnership would continue paying the GRT on United's rental income in accordance with his agreement with Mohammad Hamed. See Exhibit 1, p. 13 (testimony of Fathi Yusuf); see *also* Exhibit 1, p. 43-44 (testimony of Mike Yusuf). Following his return to St. Croix and the filing of this lawsuit in 2012, Mr. Yusuf first discovered from a review of records that gross receipt taxes for rental income had been paid by United, rather than the partnership, up to 2001. See *id.* at 13, 17 (testimony of Fathi Yusuf); Exhibit 3.

Response: Hamed objects the implication in this statement that Waleed Hamed knew anything about this purported agreement between the Partners. No one but Fathi Yusuf seems to think there was such an agreement. See HCSOF ¶¶ 2-6 – Mr. Mohammad Hamed did not make the alleged agreement and did not testify to the alleged agreement. Waleed and Mafi Hamed and Mike Yusuf did not know of the alleged agreement. See HCSOF ¶¶ 7-11 – none of the rationales Fathi Yusuf offered up for why the Partnership would pay the United Shopping

Center's GRTs materialized. See HCSOF ¶ 12—no evidence to show the Partnership paid the United Shopping Center GRTs from 1986-1992 and HCSOF ¶ 13—Yusuf states the Partnership isn't supposed to start paying GRTs for the Shopping Center until 1994. Thus, there was no reason for Yusuf to believe that the Partnership would pay the Shopping Center's GRTs. Finally, Yusuf had full access to the documents from 1993-2001 during those years to determine who had been paying the Shopping Center's gross receipt taxes.

YSOF #7. United's Claim Y-5 is supported by records showing that it paid from its tenant account at Community Bank a total of \$60,586.96 in GRT on rental income earned from tenants at the United Shopping Center that should have been paid by the partnership. See **Exhibit 3**, checks, gross receipts forms, and monthly tenant account reconciliations for 1996 showing payment of gross receipt taxes from United's tenant account from 1993 to 2001; **Exhibit 4**, Community Bank account records from 1996 showing checks corresponding to GRT payments for 1996; **Exhibit 5**, 1995 monthly tenant account reconciliations; and **Exhibit 6**, monthly tenant account reconciliations for 1997 and 1998, and corresponding Community Bank statements for 1997 and 1998.

Response: Hamed objects that the exhibits listed support United's Y-5 claim. The exhibits merely show that the Shopping Center paid its own gross receipt taxes with its own money. The exhibits do not establish that there was any agreement between the Partners for the Partnership to pay Yusuf family-owned United Shopping Center's gross receipt taxes. See HCSOF ¶¶ 2-6 – Mr. Mohammad Hamed did not make the alleged agreement and did not testify to the alleged agreement. Waleed and Mafi Hamed and Mike Yusuf did not know of the alleged agreement.

YSOF #8. Waleed Hamed was still in college when Mr. Yusuf reached his agreement with Mohammad Hamed regarding the payment of gross receipt taxes, and was not present when that agreement was made. See Exhibit 1, p. 24 (testimony of Fathi Yusuf).

Response: Hamed objects to the statement that Waleed Hamed was not present when Mr. Yusuf reached an agreement with Mr. Mohammad Hamed regarding the payment of the Yusuf

family-owned United Shopping Center's gross receipts with Partnership funds. No agreement was ever made, so there was no one present. See HCSOF ¶¶ 2-6.

V. Conclusion

The motion for summary judgment should fail due to a dispute of material facts, mainly that there was no agreement between Fathi Yusuf and Mr. Mohammad Hamed to have the Partnership pay the Yusuf family-owned United Shopping Center's gross receipt taxes. Further, these claims are outside of the applicable statute of limitations and finally, there is no course of dealings or historical pattern suggesting that the Partnership intended to pay the United Shopping Center's gross receipts.

Dated: May 27, 2020



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2020, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross (*w/ 2 paper copies to his Clerk*)
Special Master
edgarrossjudge@hotmail.com

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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the limitations set forth in Rule 6-1 (e). Counsel notes that this excludes the cover page, caption, table of contents, table of authorities, appendices, exhibits, certificates of service and "*Statement of Undisputed Facts*" per the revised requirements. As the Rule, as amended, is unclear, **if the *Statement of Facts* is counted in the total**, Hamed will remove it from the body and append it as a separate exhibit.



LIST OF EXHIBITS

Exhibit Number	Description
Group Exhibit 1	Fathi Yusuf Deposition, February 2, 2000 United Corporation Shareholders
Exhibit 2	1/21/2020 Deposition testimony re gross receipt taxes
	Hamed CSOF ¶ 2: 8:19-21; 9:2-9 & 19:17-25
	Hamed CSOF ¶ 3: 19:17-25; 20:3-9 & 23:1-11
	Hamed CSOF ¶ 4: 64:24-25 & 65:1-5, 10-13
	Hamed CSOF ¶ 5: 39:13-17 & 41:2-5
	Hamed CSOF ¶ 6: 114:5-23
	Hamed CSOF ¶ 7: 8:19-21, 9:2-9 & 10:1-11
	Hamed CSOF ¶ 9: 23:1-24
	Hamed CSOF ¶ 12: 11:4-6 & 25:16-22
	Hamed CSOF ¶ 14: 67:6-25 & 68:1-8
	Hamed CSOF ¶ 16: 26:3-20 & 27:1-4, 11-16
	Hamed CSOF ¶ 17: 30:7-10, 17-18, 21-25; 31:1-6, 9-25 & 32:1-4
	Hamed CSOF ¶ 18: 137:3-11
	Hamed CSOF ¶ 19: 131:10-15; 138:19-25 & 139:1-10
	Hamed CSOF ¶ 20: 137:6-11; 149:25; 150:1-7, 17-20, 23-25 & 151:1-14
	Hamed CSOF ¶ 21: 126:25 & 127:1-18
	Hamed CSOF ¶ 22: 136:7-16 & 137:6-11, 14-20
	Hamed CSOF ¶ 23: 132:8-12
	Hamed CSOF ¶ 24: 132:8-12, 19-25
	Hamed CSOF ¶ 25: 124:14-20 & 133:1-14
	Hamed CSOF ¶ 26: 132:8-12, 19-25 & 133:1-3
Exhibit 3	April 2, 2014 Deposition of Fathi Yusuf

Group

Exhibit 1

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

AHMAD IDHEILEH,

Plaintiff,

vs.

UNITED CORPORATION and
FATHI YUSUF, Individually,

Defendants.

Case No. 156/1997

THE ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of February 2000, at the Offices of
Caribbean Scribes, 2132 Company St., Ste. 3, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
1:05 p.m. and 4:05 p.m. pursuant to Notice and Federal Rules
of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

Group

EXHIBIT

1

Cheryl L. Haase
(340) 773-8161

CC



FATHI YUSUF -- DIRECT

1 A. I personally own 50 percent of Plaza Extra in
2 1986. I own United Shopping Plaza. I'm a member of
3 United Corporation, who owns United Shopping Plaza. I build
4 that store, I was struggling for a loan. The whole island
5 know what I went through. I said I'm going to build this
6 building no matter what, and hold the supermarket for my
7 personal use.

8 It took me three years. I give an offer to
9 two nephew of mine and my brother-in-law, Mr. Hamed, if they
10 would like to join me in building up this store together, and
11 we should not have any problem, if I finish build up the
12 building, we should have no problem whatsoever to go to the
13 bank and the bank will grant us the loan to operate the
14 supermarket. Okay?

15 During construction -- I'm going to go a
16 little bit back to tell you what is my background. During
17 construction, I was struggling for loan. And at that time
18 Banco Popular, I remember, came into the Virgin Islands and
19 took over the majority of interest of First National
20 Citibank. They buy all their customers, and they was very
21 hungry to do business in the island because they have
22 expenses to face and they like to issue loan as fast as
23 possible to cover their expenses.

24 Excuse me. Can I have water please if you
25 don't mind?

Cheryl L. Haase
(340) 773-8161

HAMD597675

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

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	
)	
Plaintiff,)	CIVIL NO. SX-12-CV-370
)	
v.)	ACTION FOR DAMAGES, INJUNCTIVE AND DECLARATORY RELIEF
)	
FATHI YUSUF and UNITED CORPORATION ,)	
)	
Defendants.)	JURY TRIAL DEMANDED

**DEFENDANT UNITED CORPORATION'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

~~COMES NOW, Defendant United Corporation, (hereinafter referred to as "United" or "Defendant"), by and through undersigned counsel, The DeWood Law Firm, by Nizar A. DeWood, Esq., and respectfully answers as follows to the Plaintiff's First Set of Interrogatories to Defendant, United Corporation.~~

Subject to the objections set forth below, Defendant answers as follows to the First Set of Interrogatories filed by Plaintiff.

PRELIMINARY STATEMENT

These answers and objections are made solely for the purpose of this action. Each answer is subject to any and all objections as to competence, relevance, materiality, propriety, and admissibility; and any and all objections and grounds that would require the exclusion of any statement contained in any response, if such request were asked of, or any statement contained therein were made by, a witness present and testifying in court, all of which objections and grounds are hereby reserved and may be interposed at the time of trial.

The following answers are based upon information presently available to Defendant and, ~~except for explicit facts admitted herein, no incidental or implied admissions are intended~~

Group

EXHIBIT

1

5. Please list the dates of all subsequent transfers of stock or new issuance of stock of United Corporation since the initial stock issuance, including

- a) the names and address of new shareholders,
- b) the amount of stock this shareholder then owned,
- c) the person or entity that transferred the stock to the this shareholder
- d) the consideration the shareholder paid for the stock
- e) whether the transfer is listed on the stock ledger of United Corporation

Answer to Interrogatory No. 5:

~~Defendant objects to this Interrogatory as irrelevant. Without waiving said objection, Defendant Answers this Interrogatory as follows:~~

United Corporation as an S-Corp.:

<u>Name</u>	<u>Address</u>	<u>Title</u> ³⁴	<u>Percentage</u>
Fathi Yusuf	4 C & D Sion Farm Christiansted, USVI	Secretary/Treasurer	36.0%
Fawzia Yusuf	92 La Grande Princess Christiansted, USVI	Vice President	36.0%
Maher Yusuf	4 C & D Sion Farm Christiansted, USVI	President	7.0%
Najeh Yusuf	St. Thomas, USVI		7.0%
Yusuf Yusuf	92 C&D La Grande Princess Christiansted, USVI		7.0%
Zayed Yusuf	USVI		7.0%
Zeyad Yusuf	Texas		0.0% ⁵

³ All Board of Directors

⁴ All Shareholders

⁵ On March 1, 2012, Zeyad Yusuf transferred 3 ½ of his shares to Fathi Yusuf and 3 ½ shares to Fawzia Yusuf.

VERIFICATION

On this, the 19 day of September 2013, before me personally appeared **Maher Yusuf**, acting in his capacity as President for United Corporation, and on behalf of United Corporation, after being first duly sworn, states under oath that the foregoing Answers to Interrogatories, directed to said Corporation are true and correct to the best of his knowledge and belief, and that he executed same for an on behalf of United Corporation.

This, the 19th day of September 2013.

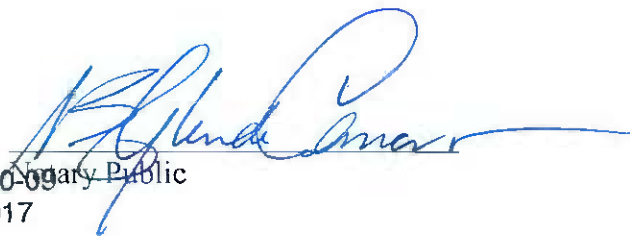
UNITED CORPORATION

By: 
Maher Yusuf, President

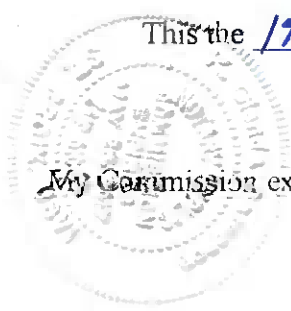
**TERRITORY OF U.S. VIRGIN ISLANDS
DISTRICT OF ST. CROIX**

On this the 19th day of September 2013, before me personally appeared **Maher Yusuf**, acting in his capacity as President of United Corporation and on behalf of United Corporation, executed the foregoing Verification.

This the 19th day of September 2013.


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

My Commission expires: _____

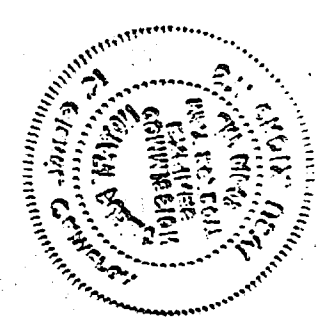


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Third block of faint, illegible text, continuing the main body of the document.

Fourth block of faint, illegible text, possibly a concluding paragraph or signature area.



Dated: September 19th, 2013

Respectfully Submitted,

THE DEWOOD LAW FIRM



Nizar A. DeWood, Esq.

V.I. Bar No: 1177

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St. Croix, USVI 00820

Tel: 340.773.3444

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Counsel for Defendant

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1001 Brickell Bay Drive, 32nd. Floor

Miami, FL 33131

Tel: 305.350.5690

Fax: 305.371.8989

Co-Counsel for Defendant

Exhibit 2

**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 21, 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.)

EXHIBIT

2

**THE VIDEOTAPED ORAL DEPOSITIONS OF FATHI YUSUF,
MAHER "MIKE" YUSUF, WALEED "WALLY" HAMED, NEJEH YUSUF,
MAFEED "MAFI" HAMED, AND JOHN GAFFNEY**

was taken on the 21st day of January, 2020, at the Law
Offices of Joel H. Holt, 2132 Company Street, The Alcove
Room, Christiansted, St. Croix, U.S. Virgin Islands, between
the hours of 10:00 a.m. and 5:09 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

APPEARANCES**A-P-P-E-A-R-A-N-C-E-S****For the Plaintiffs:**

Law Offices of
Joel H. Holt
2132 Company Street, Suite 2
Christiansted, St. Croix
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

Hamed CSOF ¶ 2

Deposition Cites

8:19-21

9:2-9

19:17-25

FATHI YUSUF -- DIRECT

1 **THE VIDEOGRAPHER:** Please swear in the
2 witness.

3 **FATHI YUSUF,**

4 called as a witness, having been first duly sworn,
5 testified on his oath as follows:

6 **DIRECT EXAMINATION**

7 **BY MS. PERRELL:**

8 **Q.** All right. Good morning, Mr. Yusuf.

9 **A.** Good morning.

10 **Q.** So this particular deposition, this set of
11 depositions, is going to be relating to a number of claims
12 the parties have made as to gross receipts, okay? And the
13 payment of gross receipts.

14 Do you recall that as a owner of United --
15 and I'm going to say United operating as a Yusuf entity, as
16 opposed to United operating, or with the hat of the
17 partnership, okay?

18 **A.** Okay.

19 **Q.** So when I say United, I'm talking about United
20 that is your family's entity that owns real estate and the
21 shopping center and so forth.

22 **A.** Okay.

23 **Q.** Okay. Have -- has United made a claim to recover
24 certain gross receipts taxes for monies received from
25 ~~tenants that were renting at the United Shopping Center?~~

FATHI YUSUF -- DIRECT

1 ~~A. Repeat the question, please.~~

2 **Q.** ~~Okay.~~ Has United made a claim in this lawsuit --

3 **A.** Yes.

4 **Q.** -- to recover gross receipts that has been paid by
5 the United on behalf of receipts from tenants that United
6 believes should have been paid by the partnership?

7 **A.** It should have. That's the agreement between me
8 and Mr. Mohammad Hamed, is the rent, it was very, very low,
9 \$3 a square foot. ~~I entered with a partner just simply for~~

10 ~~the purpose of helping him. He's my brother in law. He~~
11 ~~have six children. He went 1 year or 18 months in school.~~
12 ~~I did not want any very much more, but I think about no more~~
13 ~~than six. So we both, uneducated, let's put it this way,~~
14 ~~and we have no trade whatsoever that we can use in~~
15 ~~St. Croix, except I met Mohammad Hamed in the '70s, sometime~~
16 ~~in the '70s, and I was from the '60 in the retail business.~~
17 ~~Mohammad Hamed, it was zero before he come to St. Croix when~~
18 ~~it come to dealing with customers.~~

19 **Q.** Okay. So can you tell me, what was the agreement
20 that you had with Mr. Hamed when you were beginning to
21 operate the grocery store business? What was the
22 arrangement that was going to be made specifically with
23 regard to gross receipts for the shopping center and the
24 parts that were not part of the grocery store operations?

25 ~~A. Yeah, you see, because I told him that -- what do~~

FATHI YUSUF -- CROSS

1 ~~think I have any further questions for Mr. Yusuf on this~~
2 ~~issue with regard to the gross receipts.~~

3 ~~If you have questions and it brings up~~
4 ~~something else, I may redirect, --~~

5 ~~**MR. HARTMANN:** Sure.~~

6 ~~**MS. PERRELL:** -- but I think that's it for me~~
7 ~~right now on the gross receipts.~~

8 ~~**MR. HARTMANN:** Okay.~~

9 ~~**MS. PERRELL:** Mr. Hartmann's going to ask you~~
10 ~~some questions.~~

CROSS-EXAMINATION

11
12 **BY MR. HARTMANN:**

13 **Q.** Okay. I'd like to, first off, Mr. Yusuf, thank
14 you for being here today. And I don't know if you remember
15 me.

16 ~~**A.** You're welcome. I know who you are.~~

17 **Q.** ~~Okay.~~ Let's talk a little bit about the original
18 deal back with you and Mr. Mohammad Hamed, okay? Back
19 when -- when you say that you agreed about gross receipts
20 tax and insurance, that you weren't going to pay it, okay?

21 When was that? Do you remember, was that
22 like in 1986 when you first started?

23 **A.** Before 1986.

24 **Q.** Before there was a partnership --

25 **A.** Yes.

Hamed CSOF ¶ 3

Deposition Cites

19:17-25

20:3-9

23:1-11

FATHI YUSUF -- CROSS

1 ~~think I have any further questions for Mr. Yusuf on this~~
2 ~~issue with regard to the gross receipts.~~

3 ~~If you have questions and it brings up~~
4 ~~something else, I may redirect, --~~

5 ~~**MR. HARTMANN:** Sure.~~

6 ~~**MS. PERRELL:** -- but I think that's it for me~~
7 ~~right now on the gross receipts.~~

8 ~~**MR. HARTMANN:** Okay.~~

9 ~~**MS. PERRELL:** Mr. Hartmann's going to ask you~~
10 ~~some questions.~~

CROSS-EXAMINATION

11 ~~**BY MR. HARTMANN:**~~

12 ~~**Q.** Okay. I'd like to, first off, Mr. Yusuf, thank~~
13 ~~you for being here today. And I don't know if you remember~~
14 ~~me.~~

15 ~~**A.** You're welcome. I know who you are.~~

16 ~~**Q.** ~~Okay.~~ Let's talk a little bit about the original~~
17 ~~deal back with you and Mr. Mohammad Hamed, okay? Back~~
18 ~~when -- when you say that you agreed about gross receipts~~
19 ~~tax and insurance, that you weren't going to pay it, okay?~~

20 ~~When was that? Do you remember, was that~~
21 ~~like in 1986 when you first started?~~

22 ~~**A.** Before 1986.~~

23 ~~**Q.** Before there was a partnership --~~

24 ~~**A.** Yes.~~

FATHI YUSUF -- CROSS

1 ~~Q. -- you agreed?~~

2 ~~A. Yeah.~~

3 Q. Tell me a little bit about how that took place.

4 Like, if you remember kind of like what he said and what you
5 said.

6 A. What he said, he never say nothing. Whatever I
7 say goes.

8 ~~Q. Okay.~~

9 A. And he accepted it.

10 ~~Q. I see.~~

11 A. We used to have -- by the way, first we decided to
12 put up a supermarket, it's four of us. Two of us walk out.
13 And he said -- and I have to end up paying penalty by not
14 keeping up my promise. And which I honor whatever word I
15 give. And before I -- I told Mr. Mohammad, Listen, I'm
16 facing penalty here. Are you going to pay the penalty with
17 me or I must pick up the penalty myself? Before you answer
18 me, Mr. Mohammad, if I pick up the penalty myself, all the
19 share walk out will be mine. The 25 percent each person. I
20 will end up owning 75 percent and you own 25 percent.

21 Q. Your mic is --

22 A. Okay. I'll hold it. I'll hold it this way, if
23 you want. I'll hold it for you.

24 (Respite.)

25 ~~Thank you.~~

FATHI YUSUF -- CROSS

1 **Q.** -- you said to him, The grocery store's got to pay
2 the receipts, not only for the grocery store, but also for
3 my -- what your lawyer called the part of United that is
4 just the Yusuf, I'll call it Yusuf's United. So the gross
5 receipts tax would be paid not only for the grocery store,
6 but also for Yusufs' United?

7 **A.** Um-hum.

8 **Q.** And you said that you told him that?

9 **A.** Yeah.

10 **Q.** And he never said anything?

11 **A.** He never said. And then I explain to him.

12 ~~**Q.** Okay.~~

13 **A.** All my building depreciation, two-and-a-half --
14 two-and-a-half, \$3 million, it being wiped out, credit, to
15 the income of this partnership. So Mohammad Hamed, he
16 getting depreciation on something that he don't even own.

17 **Q.** Right.

18 Could you use a depreciation at the time?

19 **A.** Sure.

20 **Q.** Did you have enough income?

21 **A.** Yeah.

22 **Q.** Okay.

23 **A.** All the -- my building value, it being wiped out
24 completely to the partnership.

25 ~~**Q.** Okay. So after you explained this to him, once~~

Hamed CSOF ¶ 4

Deposition Cites

64:24-25

65:1-5, 10-13

WALEED "WALLY" HAMED -- DIRECT

1 ~~Susan Nissman. Today's date is January 21st, 2020. The~~
 2 ~~deponent is Waleed Hamed. The time is 11:18.~~

3 For the purpose of voice identification, I'm
 4 requesting the attorneys present to identify themselves at
 5 this time.

6 **MS. PERRELL:** Charlotte Perrell, on behalf of
 7 United Corporation and Fathi Yusuf.

8 **MR. HOLT:** Joel Holt, on behalf of the
 9 Hameds.

10 **MR. HARTMANN:** Carl Hartmann, on behalf of
 11 the Hameds.

12 **THE VIDEOGRAPHER:** Please swear in the
 13 witness.

14 **WALEED "WALLY" HAMED,**
 15 called as a witness, having been first duly sworn,
 16 testified on his oath as follows:

17 **DIRECT EXAMINATION**

18 **BY MS. PERRELL:**

19 Q. Good morning. You've been present for the last
 20 couple depositions, and so I just have a couple quick
 21 questions regarding the gross receipts paid by -- that
 22 relate to the shopping center, the Plaza shopping center,
 23 ~~United Shopping Center.~~

24 The first question I have is, were you aware
 25 of the agreement between Mr. Fathi Yusuf and your father,

WALEED "WALLY" HAMED -- DIRECT

1 Mohammad Hamed, that Mr. Yusuf testified to that the grocery
2 store operations, the partnership, would ultimately pay all
3 of the gross receipts for the shopping center? Were you
4 aware of that?

5 **A.** No.

6 ~~**Q.** Okay. Did you ever have any discussions with
7 Mr. Yusuf regarding gross receipts tax at some later point
8 in time as you were working in the Plaza Extra East store?~~

9 ~~**A.** Never.~~

10 **Q.** Okay. Did you have any conversations -- so if you
11 weren't aware of it, that means you also, just to clarify,
12 didn't discuss that issue with your father, correct?

13 **A.** That's correct.

14 ~~**Q.** Okay. All right. So as we sit here today, you
15 can't dispute what Mr. Yusuf has said was the arrangement
16 that he had with Mohammad Hamed relating to gross receipts,
17 correct?~~

18 **A.** That's correct, but this is a new notion. I mean,
19 I never heard of this before. Why, never, it came out
20 before?

21 **Q.** Okay. But you weren't aware of the agreement,
22 correct?

23 **A.** According to him, there's an agreement, but
24 there's no agreement that I'm aware of.

25 ~~**Q.** Okay. You weren't aware of it, correct?~~

Hamed CSOF ¶ 5

Deposition Cites

39:13-17

41:2-5

MAHER "MIKE" YUSUF -- DIRECT

MAHER "MIKE" YUSUF,

~~called as a witness, having been first duly sworn,~~

testified on his oath as follows:

DIRECT EXAMINATION

BY MS. PERRELL:

Q. Okay. Mike, we were asking some questions a few minutes ago. I'm going to direct your attention to Exhibit 3, which has already been identified. Do you mind if I flip him to the right page here? Let's see.

All right. Just for ease, since we've already been discussing Exhibit -- this particular page, FY 015001. ~~Let me start with that one. Let me back up.~~

Did you have any conversations with your father prior to the time that he went over to St. Thomas about how the gross receipts issues were supposed to be resolved with the shopping center?

A. No.

~~**Q.** Okay. Were you primarily in charge of writing checks for the tenant account here in St. Croix?~~

A. I -- we -- I wrote some, but we usually have a property manager.

Q. Okay. With regard to the property manager, what, exactly, was his role?

A. Going around issuing rent, invoices, collecting rent.

MAHER "MIKE" YUSUF -- DIRECT

1 ~~the work or whatever.~~

2 **Q.** ~~Okay.~~ All right. And when you issued the check,
3 did you have any idea whether there had already been a prior
4 arrangement between your father and Mr. Hamed?

5 **A.** No, I didn't know the details back then.

6 **Q.** ~~Okay.~~

7 **A.** All right.

8 **Q.** And so you thought -- well, what did you think
9 when you were handed this information from the property
10 manager?

11 **A.** Well, usually at that time, I was younger and all
12 the instructions I took was from Wally.

13 **Q.** Okay. All right. Did Wally ever discuss with you
14 the issues regarding -- or any arrangement that had been
15 made with regard to the gross receipt taxes for the shopping
16 center?

17 **A.** I don't remember.

18 **Q.** Okay. All right. Would Wally have provided you
19 any instructions with regard to the tenant account?

20 **A.** No. Not any instruction with the tenant account,
21 no.

22 **Q.** All right. So when you were provided this
23 information, was there any other things that Mr. Luff would
24 give you and say, You need to pay this, or you need to do
25 ~~this out of the tenant account?~~

Hamed CSOF ¶ 6

Deposition Cite

114:5-23

MAFEED "MAFI" HAMED -- CROSS

1 ~~A. I don't recall.~~

2 Q. -- this? Okay.

3 A. I may or may have (sic), but I don't recall.

4 ~~Q. All right. Well, if you had received -- well, let~~

5 ~~me ask you this:~~ You're not aware -- you were not present
6 during the meeting that Mr. Yusuf had with Mr. Mohammad
7 Hamed, your father, that he testified about earlier
8 regarding how the gross receipts for the shopping center
9 were to be paid; isn't that correct?

10 A. Yeah, that's correct, but just because he says it,
11 that doesn't mean it's true.

12 Q. But you weren't present for the conversation, sir,
13 you don't know, correct?

14 A. No, I don't know.

15 Q. Okay. All right. And you never discussed that
16 with your father, correct?

17 A. No. My father would discuss everything that was
18 owed to Mr. Yusuf and we would know about it.

19 Q. Okay.

20 A. He wouldn't keep anything out. He wouldn't have
21 these secret meetings. He wouldn't have any of these other
22 situation. My father's an honorable man. He's an honest
23 man, and he was to his word.

24 ~~Q. Okay. But you didn't have any conversations~~
25 relating to this particular issue? And this issue happened

Hamed CSOF ¶ 7

Deposition Cites

8:19-21

9:2-9

10:1-11

FATHI YUSUF -- DIRECT

~~THE VIDEOGRAPHER: Please swear in the
witness.~~

FATHI YUSUF,

~~called as a witness, having been first duly sworn,~~

testified on his oath as follows:

DIRECT EXAMINATION

BY MS. PERRELL:

Q. All right. Good morning, Mr. Yusuf.

A. Good morning.

Q. So this particular deposition, this set of depositions, is going to be relating to a number of claims the parties have made as to gross receipts, okay? And the payment of gross receipts.

Do you recall that as a owner of United -- and I'm going to say United operating as a Yusuf entity, as opposed to United operating, or with the hat of the partnership, okay?

~~**A.** Okay.~~

Q. So when I say United, I'm talking about United that is your family's entity that owns real estate and the shopping center and so forth.

~~**A.** Okay.~~

Q. Okay. Have -- has United made a claim to recover certain gross receipts taxes for monies received from ~~tenants that were renting at the United Shopping Center?~~

FATHI YUSUF -- DIRECT

1 ~~A. Repeat the question, please.~~

2 Q. ~~Okay.~~ Has United made a claim in this lawsuit --

3 A. Yes.

4 Q. -- to recover gross receipts that has been paid by
5 the United on behalf of receipts from tenants that United
6 believes should have been paid by the partnership?

7 A. It should have. That's the agreement between me
8 and Mr. Mohammad Hamed, is the rent, it was very, very low,
9 \$3 a square foot. ~~I entered with a partner just simply for~~

10 ~~the purpose of helping him. He's my brother-in-law. He~~
11 have six children. He went 1 year or 18 months in school.
12 I did not want any very much more, but I think about no more
13 than six. So we both, uneducated, let's put it this way,
14 and we have no trade whatsoever that we can use in
15 St. Croix, except I met Mohammad Hamed in the '70s, sometime
16 in the '70s, and I was from the '60 in the retail business.
17 Mohammad Hamed, it was zero before he come to St. Croix when
18 it come to dealing with customers.

19 Q. Okay. So can you tell me, what was the agreement
20 that you had with Mr. Hamed when you were beginning to
21 operate the grocery store business? What was the
22 arrangement that was going to be made specifically with
23 regard to gross receipts for the shopping center and the
24 parts that were not part of the grocery store operations?

25 A. ~~Yeah, you see, because I told him that what do~~

FATHI YUSUF -- DIRECT

1 ~~you have? He said 400,000.~~ I know we're going to face a
2 project in the millions, at least \$3- to \$4 million. And I
3 know my brother-in-law have nothing beside what he save,
4 400,000. So for us to go into a big business way above our
5 financial capacity, we have no choice but to hit a lending
6 institute. And from experience, nobody will lend any money
7 without taking United Shopping Center as a collateral, and
8 the house, and the owner personal financial guarantee. And
9 based on that, I say, Listen, I am giving you this \$3 a
10 square foot, but I'm not paying no insurance, I'm not paying
11 no gross receipt. The store have to take care of it.

12 ~~Well, if you look at it, the store is~~
13 ~~automatically, whether I'm a partner or not a partner. It's~~
14 ~~always responsible for insurance anyhow. And the gross~~
15 ~~receipt from the supermarket was not involved, so we was~~
16 ~~really talking less than a half a million dollars annually.~~
17 ~~So if you look at half a million dollars, time 4 percent,~~
18 ~~the whole thing is about \$20,000.~~

19 **Q.** Okay.

20 **A.** So we was not really talking about big money. We
21 know then. Later, it went up to 5 percent.

22 **Q.** Okay. Let me back up. So when this -- when this
23 partnership agreement started in 19, I'm going to say 1986,
24 and the shopping center was up, how were the gross receipts
25 ~~paid, and who was responsible for paying the gross receipts~~

Hamed CSOF ¶ 9

Deposition Cite

23:1-24

FATHI YUSUF -- CROSS

1 **Q.** -- you said to him, The grocery store's got to pay
2 the receipts, not only for the grocery store, but also for
3 my -- what your lawyer called the part of United that is
4 just the Yusuf, I'll call it Yusuf's United. So the gross
5 receipts tax would be paid not only for the grocery store,
6 but also for Yusufs' United?

7 **A.** Um-hum.

8 **Q.** And you said that you told him that?

9 **A.** Yeah.

10 **Q.** And he never said anything?

11 **A.** He never said. And then I explain to him.

12 **Q.** Okay.

13 **A.** All my building depreciation, two-and-a-half --
14 two-and-a-half, \$3 million, it being wiped out, credit, to
15 the income of this partnership. So Mohammad Hamed, he
16 getting depreciation on something that he don't even own.

17 **Q.** Right.

18 Could you use a depreciation at the time?

19 **A.** Sure.

20 **Q.** Did you have enough income?

21 **A.** Yeah.

22 **Q.** Okay.

23 **A.** All the -- my building value, it being wiped out
24 completely to the partnership.

25 ~~**Q.** Okay. So after you explained this to him, once~~

Hamed CSOF ¶ 12

Deposition Cites

11:4-6

25:16-22

FATHI YUSUF -- DIRECT

1 ~~from 1996 until the time of the fire? How~~ ~~how did it get~~
 2 paid?

3 ~~A. Who?~~

4 **Q.** How did the gross receipts tax for the shopping
 5 center get paid from 19 -- 1986 until the time of the fire?

6 **A.** It's being paid by the -- by the partnership.

7 ~~Q. Okay.~~

8 ~~A. By United.~~

9 **Q.** Okay.

10 **A.** But the -- the money in my hand, I know
 11 100 percent is not mine. I have a partner who own interest,
 12 50 percent.

13 **Q.** Right.

14 **A.** And he agreed to that, that all gross receipt will
 15 be paid by the store.

16 **Q.** Okay. So after the fire, did you -- when did you
 17 move to St. Thomas to open the St. Thomas store?

18 **A.** I don't know, maybe '92, I believe.

19 **Q.** Okay. So after you moved to St. Thomas to develop
 20 the St. Thomas store, did you coordinate with anybody back
 21 here at the St. Thomas -- or, I mean, excuse me, at the
 22 Plaza Extra East store, to make sure that those gross
 23 receipts taxes for the shopping center were being paid by
 24 the partnership?

25 ~~A. No. You see, I did not tell my son, but Wally~~

FATHI YUSUF -- CROSS

1 ~~A. He have more experience in business than a doctor.~~

2 Q. What I'm saying is, if you had to talk to somebody
3 about something dealing with like taxes, did you talk to
4 Mohammad or did you talk to Wally?

5 A. What, taxes?

6 Q. Taxes?

7 A. What did you say just now?

8 Q. If you needed to talk to somebody about taxes,
9 like if you wanted to talk to -- to one of the Hameds about
10 taxes, would you talk to Mohammad or would you talk to
11 Wally?

12 A. We never have to talk about taxes before -- after
13 we open up.

14 Q. Okay. Okay.

15 ~~A. After we open up, we don't have to.~~

16 Q. ~~Okay.~~ And who -- and who -- after you opened up
17 in '86, who took -- physically took care of the taxes? Who
18 wrote the check, et cetera?

19 A. Write the check, sometime I write it. Sometime
20 Wally write it.

21 Q. Wrote the check?

22 A. Yeah.

23 ~~Q. Okay.~~

24 A. And, by the way, I never have a private office.

25 ~~My checkbook is always in the desk. Even, let's assume,~~

Hamed CSOF ¶ 14

Deposition Cites

67:6-25

68:1-8

WALEED "WALLY" HAMED -- DIRECT

1 ~~I'm correct.~~

2 Q. Okay. And so that was about the time Mr. Yusuf
3 obviously went to St. Thomas, correct? Or he went a little
4 before, but that's that same time frame, correct?

5 A. Yes.

6 Q. ~~Okay.~~ And so before Mr. Yusuf left, did you have
7 anything to do with the writing of any checks for the gross
8 receipts, either for the grocery store operations, or any
9 other gross receipts taxes?

10 A. Like I told you, I had nothing to with the
11 shopping center whatsoever.

12 And as far as me signing checks, we opened
13 Plaza Extra East in 1986. I didn't have any signing
14 check -- I mean, I had no authority to sign checks. Fathi
15 was the only one who signed the checks --

16 ~~Q. Okay.~~

17 A. -- for the Plaza Extra East.

18 Q. When was it you were given authority to sign
19 checks?

20 A. Sometime probably 3-4 years after that.

21 Q. Okay. So would that be early '90s?

22 A. I'm not sure. I think probably after we moved to
23 St. Thomas, or right after we moved to St. Thomas.

24 Q. Okay. Because at that point, Mr. Yusuf would be
25 gone and somebody would need to do it on behalf of the East

WALEED "WALLY" HAMED -- DIRECT

1 store?

2 **A.** I believe around that time, yes.

3 **Q.** Okay. So that makes sense. All right.

4 **Q.** **(Mr. Hartmann)** And just for the record, what was
5 the date of that?

6 **A.** The date of?

7 **Q.** When you opened St. Thomas.

8 **A.** St. Thomas, I believe it's in '94.

9 ~~**MR. HARTMANN:** Okay.~~

10 **Q.** **(Ms. Perrell)** Which was also shortly after the
11 fire and so forth; is that right?

12 **A.** Yes.

13 **Q.** Okay. All right. So before Mr. Yusuf left to go
14 to St. Thomas, was there any sit-down that you had with him
15 regarding any of the -- the documents, any of the paperwork,
16 anything that needed to be done?

17 **A.** No.

18 **Q.** Okay.

19 **A.** Fathi Yusuf always took care of that.

20 **Q.** Okay. But when he went to St. Thomas, you picked
21 up that role?

22 **A.** Absolutely not. He continued doing it himself
23 with the accountants that he had in St. Thomas.

24 **Q.** Okay. But for every check that was written at the
25 United -- let me ask you this: For the things that you had

Hamed CSOF ¶ 16

Deposition Cites

26:3-20

27:1-4, 11-16

FATHI YUSUF -- CROSS

1 ~~maybe one or two or 10 check is not signed by Wally, but he~~
2 ~~could be able to see it.~~

3 **Q.** ~~Okay.~~ And -- and during that time, you had to --
4 even back in those days, you had to fill out a sheet, right,
5 for the gross receipts tax every month?

6 **A.** Yes.

7 **Q.** Yeah. And was -- did one of you, in particular,
8 do it, or did whoever do it?

9 **A.** No, the man who collecting the rent. I don't
10 collect rent. I used to have a manager.

11 ~~**Q.** Okay.~~

12 **A.** Or several managers.

13 **Q.** Okay. So you had a manager who filled out the tax
14 forms --

15 **A.** Yeah.

16 **Q.** -- and then paid them?

17 **A.** Yes.

18 ~~**Q.** Okay.~~

19 **A.** He asked for a check and check would be written
20 and give to him.

21 ~~**Q.** Okay. And -- and do you remember what that~~
22 ~~person's name was?~~

23 **A.** I have no idea. I think all of them pass away.

24 **Q.** Okay.

25 ~~**A.** Two or three of them pass away.~~

FATHI YUSUF -- CROSS

1 Q. Okay. And -- and did it stay that way from --
2 from the time you opened until you left for St. Thomas in
3 '92?

4 A. Yes.

5 ~~Q. Okay. So~~

6 A. This is my -- this is the deal we have.

7 Q. Okay. And then in -- as I understand it -- now,
8 from 1992 on, after you moved to St. Thomas, you moved at
9 the end of '92, so we'll say -- I think your claim is for
10 ~~'93, '93 forward.~~

11 So -- so when you moved to St. Thomas at the
12 end of '92, did the taxes continue to get paid the same way?
13 In other words, did your manager --

14 A. I would assume so.

15 Q. Okay. But you don't know?

16 A. I don't know.

17 ~~Q. Okay. And did there ever come a time when you~~
18 ~~got -- you, yourself, got involved in the taxes again?~~

19 A. Never involved in the taxes. I always have be
20 able to do the work and they're supposed to follow
21 instruction.

22 Q. Okay.

23 A. I was always, most of the time, depending on Wally
24 to do the work, not his father.

25 ~~Q. Right.~~

Hamed CSOF ¶ 17

Deposition Cites

30:7-10, 17-18, 21-25

31:1-6, 9-25

32:1-4

FATHI YUSUF -- CROSS

(Respite.)

Okay. I'm going to ask you to look -- maybe your counsel could help you. Can you get him to that page?

MS. PERRELL: 1501.

MR. HARTMANN: This is -- while you're getting that, I'll just make the record.

I'm showing the witness Exhibit F, which has been marked as Exhibit 3 for the purposes of this deposition, which previously the witness identified as his claim.

~~**MS. PERRELL:** It looks like my numbers are a little out of order. That's why I was wondering.~~

MR. HARTMANN: That's okay. Take your time.

MS. PERRELL: Here it is. Sorry. It just wasn't in order originally.

~~**MR. HARTMANN:** That's okay.~~

Q. (Mr. Hartmann) And what I'm referring to is marked with a Bates Stamp Number Exhibit FY 015001.

~~And might I lead just a little?~~

~~**MS. PERRELL:** Yeah.~~

Q. (Mr. Hartmann) What I'm showing you is a check written on United Corporation Tenants Account.

A. Um-hum, yes.

Q. The tenants' account, not -- not on the partnership account.

FATHI YUSUF -- CROSS

1 **A.** Yeah.

2 **Q.** And -- and it's Check Number 1870 -- I'm sorry,
3 1674, dated 8-27-99. And itself written to the Government
4 of the Virgin Islands for gross receipts taxes for July. In
5 the notation, it says July of '99. And it's accompanied by
6 a -- by a form that was submitted with it.

7 Do you see that check?

8 **A.** Yes, it's in front of me.

9 **Q.** Okay. And could you tell me whose signature
10 appears on that check?

11 **A.** I believe this is my son, Mike.

12 ~~**Q.** Okay.~~

13 **A.** Maher Yusuf.

14 **Q.** And -- and do you recognize the signature -- the
15 presented name and the signature on the form below it?

16 ~~**A.** Below?~~

17 **Q.** I think it says Thomas.

18 **A.** I don't know who's that.

19 **Q.** Thomas Luff.

20 **A.** I don't know. I don't know. I tell you, I'm in
21 St. Thomas.

22 ~~**Q.** Okay. So -- so --~~

23 **A.** That must be the manager of the shopping center.

24 **Q.** So this is a check from 1999 paying the gross
25 receipts tax.

FATHI YUSUF -- CROSS

1 **A.** Um-hum.

2 **Q.** Written on the tenants' account, and it's signed
3 by your son, Mike?

4 **A.** Right.

5 ~~**Q.** Not by Wally?~~

6 **A.** Sir, I told you, my son never been advised
7 whatsoever about the partnership. I was never discussed it,
8 anything with my son. And I was always fighting with his
9 mother, Let your son knows everything. I said, Listen,
10 honey, my son have to respect my opinion. I have to have my
11 partner at -- at peace. I dealing with a partner. I'm
12 obligated to my partner. I am not obligated to one of my
13 ten children. They have to go with whatever I say.

14 **Q.** Okay. I guess the question I'm asking, though, is
15 that you weren't there?

16 **A.** And my son didn't know.

17 **Q.** And your son didn't know, but your son was still
18 signing the stuff?

19 **A.** Yes, his signature is on the account.

20 **Q.** And if you'll turn over to the next page.

21 **A.** Um-hum.

22 **Q.** You'll see a check. It's Bates Number FY 015000,
23 and it's dated -- a check on the United Corporation Tenants
24 Account dated 9-30-99. Says it's for the payments of August
25 of '99. And -- do you see that one?

Hamed CSOF ¶ 18

Deposition Cites

137:3-11

JOHN GAFFNEY -- CROSS

1 ~~Q. And -- and you did -- when I say "you didn't," I~~
2 ~~misspoke.~~

3 When I say you didn't know anything at all
4 before 2012, you knew some stuff?

5 **A.** I did.

6 **Q.** And, for instance, on this, you knew that some of
7 the times, the partnership paid its own -- paid the tenants'
8 account and sometimes the tenant paid the tenants' --

9 **A.** Yes.

10 **Q.** -- gross receipts taxes?

11 **A.** Yes.

12 ~~Now, can I add something to that?~~

13 **Q.** You can add whatever you'd like.

14 **A.** Okay. See, who -- who paid it and what account it
15 came out of is irrelevant. It is the debit side that is --
16 has the most relevance to me, because if the debit side is
17 going to a due to/from account, it's entirely different than
18 if the debt's going to an expense account called taxes,
19 gross receipts. If it's going to a due to/from account,
20 it's accumulating to be resolved at some future point.

21 **Q.** Exactly.

22 **A.** And so what happened was, I will say that it
23 got -- I saw a little bit of -- oh, I hate to use the word
24 confusion, but in the due to/from accounting, depending on
25 ~~who paid for it, if it went -- if it came out of the, let's~~

Hamed CSOF ¶ 19

Deposition Cites

131:10-15

138:19-25

139:1-10

JOHN GAFFNEY -- CROSS

1 ~~Q. accounting?~~

2 So your forty-four thousand is -- is just for
3 a set period?

4 **A.** That's correct.

5 **Q.** And you said that the source of your information
6 about the fact that the partnership was supposed to pay for
7 the tenant gross receipts tax was Mr. Yusuf?

8 **A.** Correct.

9 **Q.** And Mr. Yusuf told you what?

10 **A.** Well, he just told me that his agreement had
11 always been that the gross receipts taxes for the shopping
12 center were to be paid by Plaza. The -- the -- I will say
13 that I had conversations with the former controller, Margie
14 Soeffing, about that too, and she was under the -- she was
15 under the same guideline.

16 ~~Q. Okay. And and did you did you ever have~~
17 ~~a -- is there like a file or any written backup or copy of~~
18 ~~an agreement or anything that would support it for the~~
19 ~~purposes of, for instance, a GAAP-type of accounting?~~

20 **A.** I'm not sure I understand completely what your
21 question is as far as GAAP accounting, but the answer is no,
22 the -- the accounting for -- that I did was -- was based
23 upon my conversations with Mr. Yusuf. But also I set it up
24 as a due to/from item because I also had conversations with
25 ~~Mafi and I -- I explained to him at length that I was~~

JOHN GAFFNEY -- CROSS

1 ~~say, the shopping center account, it might give an~~
2 accountant a little pause to say, Okay, wait a minute. How
3 do I handle this now because this is inconsistent. Last
4 month, it was paid by the Plaza, and I just posted it to the
5 due to/from account. Now this time it was -- does it go to
6 the due to/from account or does it not? You see what I'm
7 saying?

8 **Q.** Right.

9 **A.** So, in other words, it's really the debit side of
10 it, how that's treated, that really is relevant to me.

11 **Q.** Okay. And -- and so prior to your getting there,
12 how -- how accurate was the accountant at getting those
13 things into the right due to/from account?

14 **A.** I -- I will probably -- the best I can say is that
15 I felt that there were honest people trying to do it, okay?
16 But there was -- there -- there was some -- a little bit of
17 confused accounts and it was hard to get to -- it was hard
18 ~~to get rock solid -- to rock solid numbers.~~

19 **Q.** ~~Okay.~~ So going back to my GAAP question again,
20 you said that -- you said that you had no personal knowledge
21 and that no documents in there, but that you could make some
22 sort of statement about consistency.

23 What statement could you make about
24 consistency?

25 **A.** Well, there was an effort to basically treat the

JOHN GAFFNEY -- CROSS

1 payments that were being made on behalf of the shopping
2 center gross receipts taxes as a due to/from item.

3 **Q.** Okay. So if I understand what you're saying is
4 they weren't trying to pay the tenant gross receipts taxes
5 out of the partnership, or they were?

6 **A.** I -- I believe, and I'm going to just say I
7 believe because I believe that Margie was trying to account
8 for it as a due to/from item. And what was happening is
9 occasionally it would come up and she would be pressured
10 into expensing it.

11 **Q.** Okay.

12 **A.** And so the -- the -- you know, the issue is an
13 older issue than just January 1st of 2013.

14 When I came on board on January 1st of 2013,
15 categorically I said, No, I'm recording it as a due to/from
16 item. I'm not going to -- I'm not going to argue with one
17 party or the other. I'm going to record it as a due to/from
18 item. Took me a while, but I spent some time with Mafi. I
19 convinced him of that. And what happened was, in those -- I
20 mean, they -- in order to get them to sign the checks, they
21 had to be convinced of it, and -- and Mafi might have
22 forgotten who -- who forced him to pay it, but what -- in
23 fact, what it was, it was being convinced to pay it. I was
24 basically saying, Look, I'm setting it up as due to/from
25 ~~item. It's something that you can resolve years from now or~~

Hamed CSOF ¶ 20

Deposition Cites

137:6-11

149:25

150:1-7, 17-20, 23-25

151:1-14

JOHN GAFFNEY -- CROSS

1 ~~Q. And -- and you did -- when I say "you didn't," I~~
2 misspoke.

3 When I say you didn't know anything at all
4 before 2012, you knew some stuff?

5 ~~A. I did.~~

6 Q. And, for instance, on this, you knew that some of
7 the times, the partnership paid its own -- paid the tenants'
8 account and sometimes the tenant paid the tenants' --

9 A. Yes.

10 Q. -- gross receipts taxes?

11 A. Yes.

12 ~~Now, can I add something to that?~~

13 Q. You can add whatever you'd like.

14 A. Okay. See, who -- who paid it and what account it
15 came out of is irrelevant. It is the debit side that is --
16 has the most relevance to me, because if the debit side is
17 going to a due to/from account, it's entirely different than
18 if the debt's going to an expense account called taxes,
19 gross receipts. If it's going to a due to/from account,
20 it's accumulating to be resolved at some future point.

21 Q. Exactly.

22 A. And so what happened was, I will say that it
23 got -- I saw a little bit of -- oh, I hate to use the word
24 confusion, but in the due to/from accounting, depending on
25 who paid for it, if it went -- if it came out of the, let's

JOHN GAFFNEY -- CROSS

1 ~~about this theoretical 1985 oral agreement?~~

2 **MS. PERRELL:** Objection. Also objection as
3 to form and speculation. And --

4 **MR. HARTMANN:** No, I'm asking him why he did
5 it.

6 **MS. PERRELL:** Well, I mean, the whole fact
7 that there's a partnership is an oral partnership with no
8 paperwork and no paper trail, so --

9 **Q. (Mr. Hartmann)** So he can answer.

10 Go ahead.

11 **A.** Well, no. I mean, I recognized very quickly what
12 Mr. Yusuf told me was the agreement between him and Mohammad
13 Hamed was their agreement. And there was no way I was going
14 to be able to prove it.

15 What happened was, when it came down to now
16 we had to take action, we had to get it paid, I was caught
17 in the middle of, it's got to be paid by them, okay?
18 It's -- and I was caught in the middle. And I said, Okay.
19 The easy way out for me is to account for this as a due
20 to/from item and not even -- not even engage in the argument
21 with either side.

22 **Q.** Right.

23 **A.** Just account for it as a due to/from.

24 ~~**Q.** We're not -- we're not asking -- I understand~~

25 ~~that.~~ And what I'm asking is, and the only reason that came

JOHN GAFFNEY -- REDIRECT

1 up, the only reason you were placed in that position is Mr.
 2 Hamed -- Mr. Yusuf told you that there was some old oral
 3 agreement that would have the partnership pay the tenant
 4 account's gross receipts tax; is that correct?

5 **A.** That, plus the fact I did see some evidence of the
 6 same issue existing before 2000 -- I started the, you know,
 7 doing the conversion in January of 2013.

8 ~~Q.~~ So you shook your head yes, but you didn't say the
 9 word yes.

10 **A.** Oh, I'm sorry, yes.

11 **MR. HARTMANN:** Okay. Thank you. I have no
 12 further questions.

REDIRECT EXAMINATION

13 **BY MS. PERRELL:**

14 **Q.** I have one follow-up question to that.

15 **A.** Okay.

16 **Q.** You said you saw some evidence. And that evidence
 17 was you had had some conversations with a lady that was the
 18 accountant. What was her name?

19 **A.** Margie Soeffing.

20 ~~Q.~~ Right. And that it was her understanding --

21 ~~MR. HARTMANN:~~ Object. Hearsay.

22 **Q.** (Ms. Perrell) You -- you spoke with her directly,
 23 right?

24 **A.** I've spoke with her directly, yes.

JOHN GAFFNEY -- REDIRECT

1 **Q.** And as a result of that conversation, did you have
2 an understanding how the tenant -- how the shopping center
3 gross receipts were to be paid, at least what was --

4 **A.** Well, Margie -- Margie flip-flopped back and
5 forth, and she admitted to it, to me that she did. And she
6 did tell me that, you know, sometimes under pressure from
7 Mr. Yusuf, she would start feeling like she needed to write
8 it off, and then sometimes under, I don't know whether she
9 was getting pressure from anybody else, I can't say
10 specifically, but she would -- she did have a tendency to
11 also try and treat it as a due to/from item, too.

12 **Q.** All right. So that you understood that there were
13 folks that were treating it both ways?

14 **A.** Yeah.

15 ~~**MS. PERRELL:** Okay. All right. No further~~
16 ~~questions.~~

17 ~~**THE VIDEOGRAPHER:** This is a conclusion?~~

18 ~~**MR. HARTMANN:** Yes. No, continuation.~~

19 ~~**THE VIDEOGRAPHER:** This is a continuation of~~
20 ~~the deposition. The time is 1:15.~~

21 ~~(Lunch recess taken.)~~

22 ~~**JOHN GAFFNEY**~~

23 ~~**THE VIDEOGRAPHER:** This is the continuation~~
24 ~~of the deposition of John Gaffney. The time is 2:33.~~

25 ~~**DIRECT EXAMINATION**~~

Hamed CSOF ¶ 21

Deposition Cites

126:25

127:1-18

MAFEED "MAFI" HAMED -- RECROSS

1 ~~A. Exactly.~~

2 Q. So just to be clear, when you say it was resolved
3 at a later date or settled at a later date, what do you mean
4 by that?

5 A. Well, what happened was after some of the larger
6 items were resolved, meaning inventory, fixed assets, those
7 were -- those were the various meetings, there were still a
8 number of items on the balance sheet that I kept on saying
9 that we need to -- we need to resolve these, because we're
10 trying to get it down to a couple of assets, namely the
11 securities account and namely the cash accounts. Then --
12 and basically get it down to its simplicity.

13 One of the items that we had, one substantial
14 item that we had was very obvious on the balance sheet, was
15 a \$900,000 payment that was made to the V.I. Bureau of
16 Internal Revenue for the quarterly estimated taxes for the
17 Yusufs. So Joel Holt brought that up in a conference call
18 and said that that needs to be repaid, and we agreed. That
19 became part of the due to/from items, along with the gross
20 receipts taxes, the accumulation of the gross receipts
21 taxes, which, at that point, had accumulated to about
22 \$44,000 --

23 Q. Okay.

24 ~~A. -- from January 1st, 2013 forward.~~

25 Q. Okay. So as we sit here today, has the

MAFEED "MAFI" HAMED -- RECROSS

1 partnership paid for the United Shopping Center's gross
2 receipt taxes from January of '13 forward until the split?

3 **A.** On the books right now, you know, that -- that --
4 I don't mind pointing out this schedule, but this was --
5 this was my effort to try and highlight everything that
6 needed to be discussed between the two parties. And -- and
7 ultimately what happened was in a meeting with Judge Ross,
8 Mr. Yusuf and I, we spent quite a bit of time on this, and
9 the point was argued about who was supposed to be incurring
10 the cost of the shopping center. Judge Ross finally said,
11 Okay. For our purposes right now, go ahead, and let's, you
12 know, let's go ahead. I proposed a journal entry. I
13 proposed a journal entry so that we could get these off the
14 books. And then the point about the \$44,000 in the gross
15 receipts taxes could be argued later.

16 But ultimately what happened was, once I
17 posted that journal entry, I expensed \$44,000 to taxes,
18 gross receipts, and I did that in 2015.

19 ~~Q. Okay. So if I -- I'm going to try to summarize~~
20 ~~that into --~~

21 **A.** Okay.

22 **Q.** -- laymen non-accounting speak, okay?

23 **A.** Okay.

24 **Q.** And my understanding of this laymen version of
25 ~~what you just described is that clearly there was debate,~~

Hamed CSOF ¶ 22

Deposition Cites

136:7-16

137:6-11, 14-20

JOHN GAFFNEY -- CROSS

1 Q. Okay.

2 A. Yeah.

3 Q. So -- so if payments were made from both, how does
4 that -- how does that gel with a view of consistency?

5 I guess what I'm -- let me ask the question
6 ~~in a different way.~~

7 You weren't there before 2012, were you?

8 A. Arrived in October of 2012.

9 Q. Okay. So you don't really have any idea what was
10 done before then, do you?

11 A. I have some idea, because what happened was, when
12 I arrived, they were about eight months or -- eight to ten
13 months behind on their accounting. And so what happened
14 was, I had discussions with Margie Soeffing, and we agreed,
15 we -- we came to an agreement on how it would be brought
16 current and so forth.

17 ~~Q. And you also --~~

18 A. I was aware of the fact that -- I was aware of the
19 fact that they were paying for the gross receipts taxes over
20 in St. Thomas, because that's where she was located and
21 that's where Mr. Yusuf was located at that time, too.

22 Q. And you also attempted to go back and -- and find
23 all computer records and also old paper documents; is that
24 correct?

25 ~~A. I did try. I did attempt to do that, yes.~~

JOHN GAFFNEY -- CROSS

1 ~~Q. And -- and you did -- when I say "you didn't," I~~
 2 misspoke.

3 When I say you didn't know anything at all
 4 before 2012, you knew some stuff?

5 ~~A. I did.~~

6 Q. And, for instance, on this, you knew that some of
 7 the times, the partnership paid its own -- paid the tenants'
 8 account and sometimes the tenant paid the tenants' --

9 A. Yes.

10 Q. -- gross receipts taxes?

11 A. Yes.

12 ~~Now, can I add something to that?~~

13 ~~Q. You can add whatever you'd like.~~

14 A. ~~Okay.~~ See, who -- who paid it and what account it
 15 came out of is irrelevant. It is the debit side that is --
 16 has the most relevance to me, because if the debit side is
 17 going to a due to/from account, it's entirely different than
 18 if the debt's going to an expense account called taxes,
 19 gross receipts. If it's going to a due to/from account,
 20 it's accumulating to be resolved at some future point.

21 ~~Q. Exactly.~~

22 A. And so what happened was, I will say that it
 23 got -- I saw a little bit of -- oh, I hate to use the word
 24 confusion, but in the due to/from accounting, depending on
 25 ~~who paid for it, if it went -- if it came out of the, let's~~

Hamed CSOF ¶ 23

Deposition Cite

132:8-12

JOHN GAFFNEY -- CROSS

1 ~~setting up as a due to/from item so that could be something~~
2 that they could resolve later on.

3 Q. I understand that, and we appreciate that. And
4 this is that "later on time."

5 A. Right.

6 Q. So -- so what I'm asking is kind of a slightly
7 ~~different question than how you did it. It was -- first of~~
8 **all,** just tell me very briefly, what is GAAP?

9 A. Generally accepted accounting principles.

10 Q. Okay. And what is -- what is it used for?

11 A. Well, it covers basically the entire subject of
12 accounting for businesses, ~~but simply put, for instance,~~

13 ~~if -- if I have to repair a compressor to a refrigerator,~~
14 it's appropriate to charge it to repairs and maintenance,
15 okay? And so GAAP would sort of have something to do with
16 that, and -- and --

17 Q. Okay. Let's use that example.

18 A. Okay.

19 Q. If I was going to charge repairs to a
20 refrigerator, I would get an invoice from the person who
21 repaired it, that would go into my books. And later on,
22 when the IRS or someone else came knocking, I would go back
23 and show them that document to show why it was in there; is
24 that correct?

25 A. Correct, yes.

Hamed CSOF ¶ 24

Deposition Cites

132:8-12, 19-25

JOHN GAFFNEY -- CROSS

1 ~~setting up as a due to/from item so that could be something~~
2 that they could resolve later on.

3 Q. I understand that, and we appreciate that. And
4 this is that "later on time."

5 A. Right.

6 Q. So -- so what I'm asking is kind of a slightly
7 ~~different question than how you did it. It was -- first of~~

8 ~~all,~~ just tell me very briefly, what is GAAP?

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10 Q. Okay. And what is -- what is it used for?

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12 accounting for businesses, ~~but simply put, for instance,~~

13 ~~if -- if I have to repair a compressor to a refrigerator,~~

14 it's appropriate to charge it to repairs and maintenance,
15 okay? And so GAAP would sort of have something to do with
16 that, and -- and --

17 Q. Okay. Let's use that example.

18 ~~A. Okay.~~

19 Q. If I was going to charge repairs to a
20 refrigerator, I would get an invoice from the person who
21 repaired it, that would go into my books. And later on,
22 when the IRS or someone else came knocking, I would go back
23 and show them that document to show why it was in there; is
24 that correct?

25 A. Correct, yes.

Hamed CSOF ¶ 25

Deposition Cites

124:14-20

133:1-14

1 ~~documents we were talking about. So it's JVZ-1028, and ask~~
2 you if this document is something that you had initially
3 prepared without the handwriting, just the typed portions?

4 **A.** Yes, this is -- this is something that I prepared
5 every month.

6 **Q.** Okay. And you did this as part of your duties as
7 the partnership accountant?

8 **A.** Yes.

9 **Q.** Okay. And included in there is a payment for or a
10 potential payment for the gross receipts due for the Plaza
11 Extra shopping -- I'm sorry, for the United Shopping Center
12 in St. Croix; is that right?

13 ~~**A.** Correct, yes.~~

14 **Q.** ~~Okay.~~ And what was your understanding as to why
15 the gross receipts for the shopping center, which was not
16 part of the partnership, would be paid by the partnership?

17 **A.** Just discussions with Mr. Yusuf over the
18 agreement, the purported agreement that the shopping center
19 gross receipts taxes are to be paid by the -- by Plaza
20 Extra.

21 ~~**Q.** Okay. And did there come a point in time with the~~
22 ~~Hamed side, or the Hamed family, objected to the payment of~~
23 ~~those gross receipt taxes for the United Shopping Center?~~

24 **A.** Yes.

25 ~~**Q.** Okay. And what was the interim resolution or~~

JOHN GAFFNEY -- CROSS

1 Q. ~~Okay.~~ And is there any such document with regard
2 to this agreement? That's all I'm asking.

3 A. No.

4 Q. ~~Okay.~~ And -- and would this -- would this --
5 would the documentation that you have with regard to this,
6 survive an audit under GAAP?

7 A. Yes, it could survive an audit under GAAP, based
8 upon consistency, because sometimes agreements are made.
9 They're not necessarily always in writing. And then what
10 happens is if something has been handled a certain way for
11 so many years and --

12 ~~Q. Okay.~~

13 A. -- so many months, it could -- it could be
14 actually easily accepted.

15 ~~Q. Okay. I'm going to show you a document that's~~
16 ~~been labeled Exhibit 1, which is Chart 1. And I'll~~
17 ~~represent to you that the entire period that's in pink~~
18 ~~there, this was paid -- this was paid by one or the other of~~
19 ~~the parties for the other. I'm not going to tell you which~~
20 ~~paid for whom.~~

21 Can -- can you tell from looking at that
22 document who paid whose taxes for 2003 through 2000 -- I
23 mean, I'm sorry, 1993 through 2001?

24 **MS. PERRELL:** I'm going to object to --

25 ~~MR. HARTMANN:~~ That's okay.

Hamed CSOF ¶ 26

Deposition Cites

132:8-12, 19-25

133:1-3

JOHN GAFFNEY -- CROSS

1 ~~setting up as a due to/from item so that could be something~~
2 that they could resolve later on.

3 Q. I understand that, and we appreciate that. And
4 this is that "later on time."

5 A. Right.

6 Q. So -- so what I'm asking is kind of a slightly
7 ~~different question than how you did it. It was -- first of~~

8 ~~all,~~ just tell me very briefly, what is GAAP?

9 A. Generally accepted accounting principles.

10 Q. Okay. And what is -- what is it used for?

11 A. Well, it covers basically the entire subject of
12 accounting for businesses, ~~but simply put, for instance,~~

13 ~~if I have to repair a compressor to a refrigerator,~~
14 it's appropriate to charge it to repairs and maintenance,
15 okay? And so GAAP would sort of have something to do with
16 that, and -- and --

17 Q. Okay. Let's use that example.

18 ~~A. Okay.~~

19 Q. If I was going to charge repairs to a
20 refrigerator, I would get an invoice from the person who
21 repaired it, that would go into my books. And later on,
22 when the IRS or someone else came knocking, I would go back
23 and show them that document to show why it was in there; is
24 that correct?

25 A. Correct, yes.

JOHN GAFFNEY -- CROSS

1 Q. ~~Okay.~~ And is there any such document with regard
2 to this agreement? That's all I'm asking.

3 A. No.

4 ~~Q. Okay. And and would this -- would this --~~
5 would the documentation that you have with regard to this,
6 survive an audit under GAAP?

7 A. Yes, it could survive an audit under GAAP, based
8 upon consistency, because sometimes agreements are made.
9 They're not necessarily always in writing. And then what
10 happens is if something has been handled a certain way for
11 so many years and --

12 Q. Okay.

13 A. -- so many months, it could -- it could be
14 actually easily accepted.

15 Q. Okay. I'm going to show you a document that's
16 been labeled Exhibit 1, which is Chart 1. And I'll
17 represent to you that the entire period that's in pink
18 there, this was paid -- this was paid by one or the other of
19 the parties for the other. I'm not going to tell you which
20 paid for whom.

21 Can -- can you tell from looking at that
22 document who paid whose taxes for 2003 through 2000 -- I
23 mean, I'm sorry, 1993 through 2001?

24 MS. PERRELL: I'm going to object to --

25 ~~MR. HARTMANN: That's okay.~~

C-E-R-T-I-F-I-C-A-T-E

I, SUSAN C. NISSMAN, a Registered Merit Reporter and Notary Public for the U.S. Virgin Islands, Christiansted, St. Croix, do hereby certify that the above and named witnesses, **FATHI YUSUF, MAHER "MIKE" YUSUF, WALEED "WALLY" HAMED, NEJEH YUSUF, MAFEED "MAFI" HAMED, and JOHN GAFFNEY**, were first duly sworn to testify the truth; that said witnesses did thereupon testify as is set forth; that the answers of said witnesses to the oral interrogatories propounded by counsel were taken by me in stenotype and thereafter reduced to typewriting under my personal direction and supervision.

I further certify that the facts stated in the caption hereto are true; and that all of the proceedings in the course of the hearing of said deposition are correctly and accurately set forth herein.

I further certify that I am not counsel, attorney or relative of either party, nor financially or otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand as such Registered Merit Reporter on this the 22nd day of February, 2020, at Christiansted, St. Croix, U.S. Virgin Islands.

My Commission Expires:
June 28, 2023

Susan C. Nissman, RPR-RMR
NP 234-19

Exhibit 3

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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.) Case No. SX-12-CV-370
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED, MUFEED)
HAMED, HISHAM HAMED, and PLESSEN)
ENTERPRISES, INC.,)
)
Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

EXHIBIT

3

APPEARANCES**A-P-P-E-A-R-A-N-C-E-S****For the Plaintiff/Counterclaim Defendant:**

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By: Joel H. Holt

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Cheryl L. Haase
(340) 773-8161

HAMD601299

APPEARANCES1
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25**For Waleed Hamed:**

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By: K. Glenda Cameron

Also Present:

Josiah Wynans, Videographer
Kim Japinga
Waleed Hamed
Hisham Hamed
Mufeed Hamed
Maher Yusuf

Cheryl L. Haase
(340) 773-8161

Hamed CSOF ¶ 10

Deposition Cites

52:12-17

53:8-22

54:5-11, 13-22

FATHI YUSUF -- DIRECT

1 ~~Q. You agree, though, that Mr. Mohammad Hamed is your~~
 2 partner to the extent that he is sharing in 50 percent of
 3 the net profits of the three Plaza Extra stores.

4 **A.** He's my partner, sir, under a lot of conditions.
 5 There is a uniform law of a partnership, and there is
 6 individual agreement. If you want to call it in the -- in
 7 the category of partners, you may call it, but there is an
 8 agreement and commitment attached to that. It's not there
 9 is a loan at 20-percent interest, there is a loan at
 10 8-percent interest, and there is a loan, a friendship, at no
 11 ~~interest at all, but we all call them loan. Isn't it?~~

12 I have, with this gentleman, a shake-hand
 13 commitment, and I live up to it up to now, just to show you
 14 how clean I am and how decent I am, this man never have my
 15 signature as a partner, but I have never deny him as a
 16 partner in the profit. But there is a lot of condition, he
 17 have to live up to it.

18 ~~Q. Okay. I'll get to the conditions in a second.~~

19 **A.** Okay.

20 **Q.** So you haven't denied that he's a partner in
 21 50 percent of the net profits in the three stores?

22 **A.** Yes.

23 **Q.** And you've also agreed that he owns 50 percent of
 24 the inventory and equipment in the stores, the three stores,
 25 ~~correct?~~

FATHI YUSUF -- DIRECT

1 ~~A. Yes.~~

2 Q. Okay. And that would include 50-percent interest
3 in the net profits of any bank accounts, payables,
4 receivables?

5 A. Whatever is belong to Plaza is for me and him.

6 Q. Okay. Now, you mentioned some conditions. What
7 ~~conditions are there?~~

8 Are there some other conditions to this
9 partnership agreement?

10 A. No. The condition is, I have the final word.
11 It's I am obligated to consult with him, if I see it's
12 important for me to consult. I was suppose to be, after
13 1993, I was supposed to have an office within the
14 supermarket free of charge. I was -- he was supposed to,
15 the Plaza Extra was supposed to pay all the gross receipt
16 from January 1st, 1994 up to present, and it was covering in
17 the building, the entire building of United Shopping Plaza.

18 My duty was, is to go and commit the same
19 thing we ensure, to bring money to Mr. Hamed an extent,
20 which cost him nothing. It cost me personal guarantee, and
21 it costing me everything I own except my children and my
22 wife.

23 ~~Q. Okay. And so I'm going to go back in reverse~~
24 ~~order a little bit.~~

25 ~~A. Yes.~~

FATHI YUSUF -- DIRECT

1 ~~Q.~~ When you say one of the conditions was -- was he
 2 agreed to cover United, you're talking about insurance
 3 coverage, is that what you're talking about?

4 ~~A.~~ No, including the insurance.

5 **Q.** Okay. So the Plaza Extra stores would pay for
 6 insurance on the whole shopping center?

7 **A.** Yes.

8 **Q.** And the Plaza Extra Supermarket would pay the
 9 gross receipts, not just on the grocery store profits, but
 10 on the rent?

11 **A.** Yes.

12 ~~Q.~~ Okay.

13 **A.** ~~Excuse me.~~ One more item. The United Shopping
 14 Plaza was using the entire shopping center value
 15 depreciation to offset any income tax, which that, in
 16 return, it will give you greater saving than the insurance
 17 and the gross receipt.

18 **Q.** So there's a tradeoff you're giving them --

19 **A.** It's a tradeoff, yes.

20 **Q.** You're giving them depreciation; they're paying
 21 gross receipts and insurance?

22 **A.** Yes. Yes, sir.

23 ~~Q.~~ Okay. And then you said that something about an
 24 office that --

25 ~~A.~~ No, I have you see, I have an office in the

Hamed CSOF ¶ 13

Deposition Cite

53:8-17

FATHI YUSUF -- DIRECT

1 ~~A. Yes.~~

2 Q. Okay. And that would include 50-percent interest
3 in the net profits of any bank accounts, payables,
4 receivables?

5 A. Whatever is belong to Plaza is for me and him.

6 Q. Okay. Now, you mentioned some conditions. What
7 ~~conditions are there?~~

8 Are there some other conditions to this
9 partnership agreement?

10 A. No. The condition is, I have the final word.
11 It's I am obligated to consult with him, if I see it's
12 important for me to consult. I was suppose to be, after
13 1993, I was supposed to have an office within the
14 supermarket free of charge. I was -- he was supposed to,
15 the Plaza Extra was supposed to pay all the gross receipt
16 from January 1st, 1994 up to present, and it was covering in
17 the building, the entire building of United Shopping Plaza.

18 ~~My duty was, is to go and commit the same~~
19 thing we ensure, to bring money to Mr. Hamed an extent,
20 which cost him nothing. It cost me personal guarantee, and
21 it costing me everything I own except my children and my
22 wife.

23 Q. Okay. And so I'm going to go back in reverse
24 order a little bit.

25 A. Yes.

CERTIFICATE**C-E-R-T-I-F-I-C-A-T-E**

1
2
3 I, CHERYL L. HAASE, a Registered Professional Reporter
4 and Notary Public No. NP-158-03 for the U.S. Virgin Islands,
5 Christiansted, St. Croix, do hereby certify that the above
6 and named witness, FATHI YUSUF, was first duly sworn to
7 testify the truth; that said witness did thereupon testify
8 as is set forth; that the answers of said witness to the
9 oral interrogatories propounded by counsel were taken by me
10 in Stenotype and thereafter reduced to typewriting under my
11 personal direction and supervision.

12 I further certify that the facts stated in the caption
13 hereto are true; and that all of the proceedings in the
14 course of the hearing of said deposition are correctly and
15 accurately set forth herein.

16 I further certify that I am not counsel, attorney or
17 relative of either party, nor financially or otherwise
18 interested in the event of this suit.

19 IN WITNESS WHEREOF, I have hereunto set my hand as such
20 Certified Court Reporter on this the 3rd day of May, 2014,
21 at Christiansted, St. Croix, United States Virgin Islands.

22 _____
23 Cheryl L. Haase, RPR
24 My Commission Expires 2/10/16
25