

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*

Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

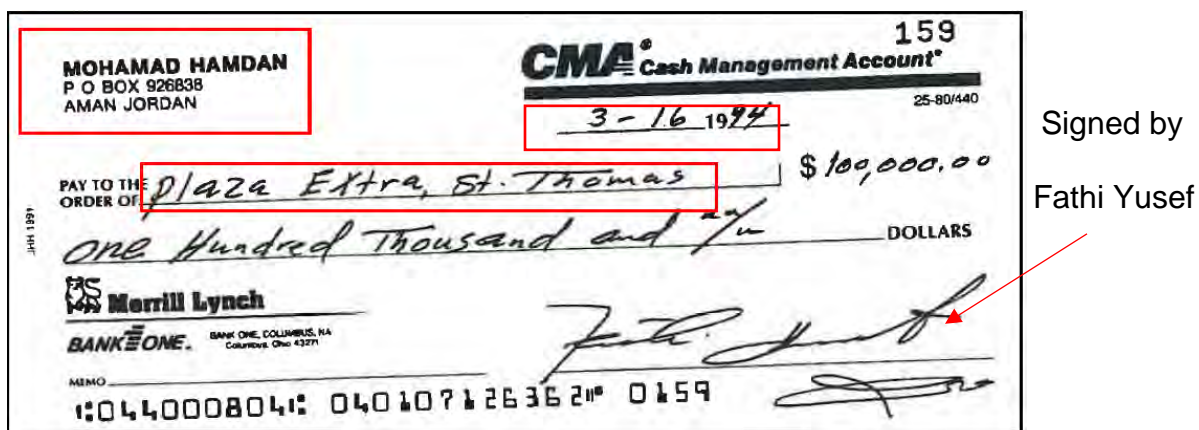
Consolidated with

Case No.: ST-18-CV-219

I. The Beginning-1991 to April, 2001

It must be noted at the outset that Yusuf has failed to produce any loan documents, like a promissory note, exchanged with his brother, Mohamad Yousef Hamden or HDC. Moreover, Yusuf failed to produce even one single check signed by Mohamad Yousef Hamden that was deposited into (or credited to) any Partnership account which might be evidence that such a loan took place.

Instead, Yusuf only produced one check on Mohamad Hamden's account for \$100,000 dated March 16, 1994, **that he (Fathi Yusuf) signed**, not Mohamad Hamden (attached as Exhibit C to Yusuf's opposition memorandum):

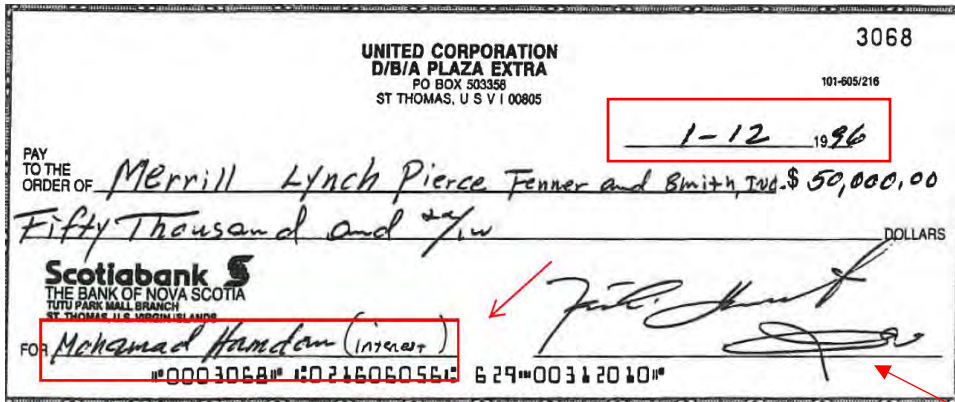


Thus, at best, Yusuf can only establish that he took \$100,000 from “his brother’s account” and deposited it into a partnership account in March of **1994**.

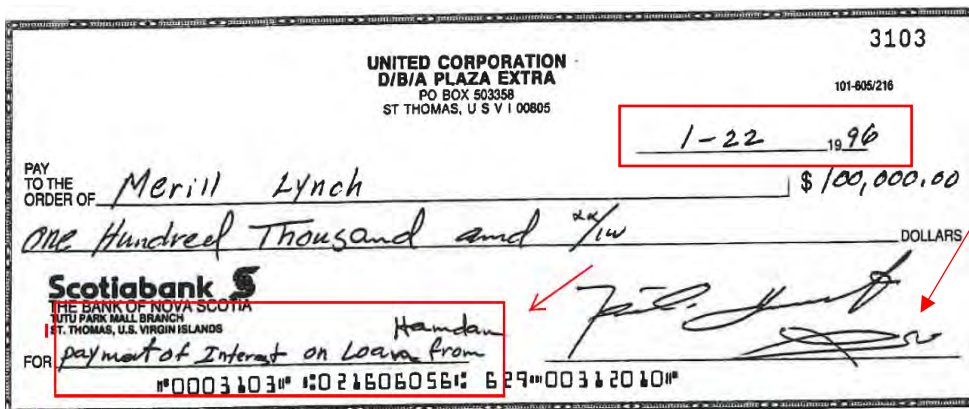
The rest of the exhibits are either “internally generated” accounting records of United Corporation in the 1994 to 1996 time period (see, e.g., Exhibits A, D, E, and J attached to Yusuf's Opposition) or anecdotal references to similar items during this same 1991 to 1997 time period that have no bearing whatsoever on whether Yusuf's brother, Mohamad Yousef Hamed, ever made such loan a to the partnership (see, e.g. Exhibits B, F, H and L).¹

¹ A one page summary of these exhibits, with dates referencing each exhibit, is attached as **Exhibit 1**. A response to Yusuf's counterstatement of Facts is attached as **Exhibit 2**.

For example, neither of these two checks dated in 1996 attached to Yusuf's motion as Exhibit G show any such loan was made:



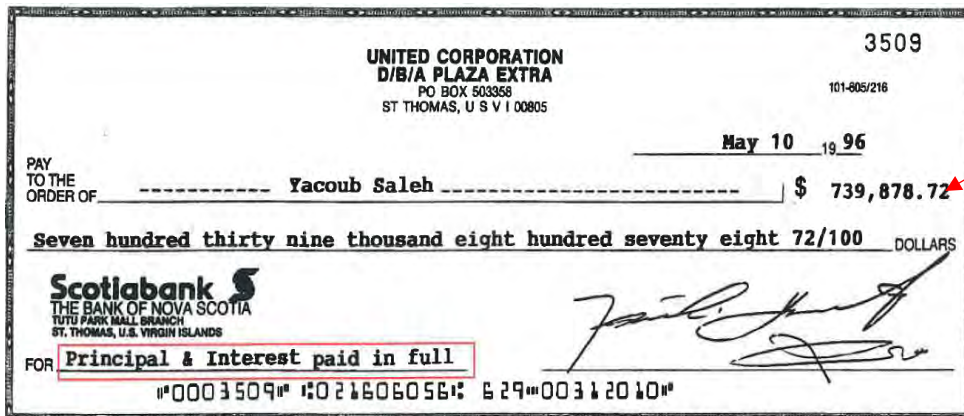
Signed by
Fathi Yusef



In short, the self-serving notations on these two checks totaling \$150,000 “in interest” for the month of January, 1996, do not provide a scintilla of evidence that a loan for a specific amount at a specific interest rate was ever made by Yusuf's brother (or HDC) to the partnership. Instead, these checks are just further evidence of Yusuf's self-serving efforts to avoid taxes by supposedly paying interest to his brother by placing funds in a Merrill Lynch Account that Yusuf concedes he controlled in 1996 when the checks were written. See ¶12 of Exhibit P to Yusuf's Opposition.

Indeed, repayment of a loan with interest would not result in simple “rounded” numbers like \$15,000, \$17,000, \$50,000 or \$100,000 as Yusuf lists in Exhibits G and J attached to his Opposition. Instead, they would look like the check he submitted as the

repayment of a loan to an unrelated third party, attached as Exhibit F to his Opposition, which has a figure showing a standard interest calculation based on a per diem calculation of "\$739,878.72", as clearly the underlying loan was not:



Amount with
"per diem"
calculation

Yusuf's "facts" in his Opposition then take a strange twist. In this regard, he admits his brother died on March 18, 1997 (Exhibit K to his Opposition), but claims he did not pay off the "loans" until four years later. In this regard, on April 11, 2001, Yusuf sent a letter to Merrill Lynch (Exhibit O to his opposition) stating in part:

United Corporation has decided to pay all of the notes payable and accrued interest to Mohammad Hamdan. The debts will be paid into his company, Hamdan Diamond, account nos. 140-07884 and 140- 07951.

That letter was sent certified mail and includes this \$500,000 deposit slip for the HDC account by the partnership (see Exhibit O attached to his Opposition):

Merrill Lynch
FUNDS RECEIPT FOR ACCOUNT

DATE 4/11/01

ACCOUNT OF Hamdan Diamond Corp.

FINANCIAL CONSULTANT

CHECK ONE - DO NOT MAIL CASH:

CASH MANAGEMENT ACCOUNT (CMA) SECURITIES FUND (SFA)

CAPITAL BUILDER ACCOUNT (CBA) UNREGULATED COMMODITY

MERRILL LYNCH READY ASSETS TRUST OTHER

03 APR 11 3:00

| DOLLARS | CENTS |
|---------|------------|
| 500.000 | 00 |
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| | |
| TOTAL | 500.000.00 |

CLIENT COPY

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The V.I. Supreme Court recently reiterated the appropriate Rule 56 standard in *Kennedy Funding Inc. As Agent For Certain Co-Lenders, Appellant/Plaintiff, v. GB Properties, LTD., & its successor in interest GAD Properties, LTD., Appellees/Defendants*, No. 2018-0014, 2020 WL 2555113, at *6 -*7 (V.I. May 20, 2020), stating in part:

Rule 56 of the Virgin Islands Rules of Civil Procedure outlines the burden-shifting approach in summary judgment analysis. First, “the moving party [must] demonstrate the absence of a genuine issue of material fact.” *Aubain v. Kazi Foods of the V.I., Inc.*, 70 V.I. 943,948 (V.I. 2019) (quoting *Chapman v. Cornwall*, 58 V.I. 431, 436-37 (V.I. 2013)), see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Subsequently, the burden shifts to the non-moving party to produce specific evidence of a genuine factual dispute for trial.” *Williams*, 51 V.I. at 194. A genuine issue of fact exists when the evidence presented could allow “a reasonable jury to return a verdict for the non-moving party.” *Id.* at 195. **Importantly, however, to survive summary judgment the nonmoving party must “do more than simply show that there is some metaphysical doubt as to the material facts.”** *Rotec Indus., Inc. v. Mitsubishi Corp.*, 215 F.3d 1246, 1250 (Fed. Cir. 2000) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* 475 U.S. 574, 586 (1986)) (Emphasis added).

The V.I. Supreme Court then went on to state in *Kennedy, id.* at *7:

Upon [movant's] successful demonstration that no triable issue of material fact existed in the record, the burden then shifted to [the nonmoving party] “to present affirmative evidence from which a jury might reasonably return a verdict in his favor.” *Chapman v. Cornwall*, 58 V.I. 431, 436-37 (V.I. 2013) (quoting *Celotex*, 477 U.S. 322-25). Importantly, [the nonmoving party], in responding to the summary judgment motion, was not free to simply rest on its pleadings or bare assertions, but was required to set forth specific facts to show a genuine issue of material fact. *Id.* (citing former FED. R. CIV. P. 56I V.I. R. CIV. P. 56(a)).

In *Kennedy*, the V.I. Supreme Court upheld a summary judgment order because the non-moving party had failed to produce a contract it alleged supported its position. The same facts exist here:

- Hamad produced a partnership check dated August 13, 2001, payable to HDC and deposited in to HDC's Merrill Lynch account #140 07884.
- Yusuf failed to offer any evidence that this deposit was a loan like the other checks he submitted, as Yusuf concedes his brother died in 1997 and that he had paid off all of the other alleged HDC loans in April of 2001.

Thus, since it is undisputed that under RUPA §402(c) it is presumed that such funds belong to the partnership, which presumption Yusuf has not offered any evidence to rebut as far as the August 13, 2001, partnership check is concerned, partial summary judgment is in order for Hamed's claim that the balance in the three Merrill Lynch accounts after September 17, 2006, is Partnership property.

III. Conclusion

For the reasons set forth herein, it is respectfully submitted that partial summary judgment as to Hamed Claim H-33 is in order.

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

Special Master

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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.

A handwritten signature in blue ink, reading "Carl J. Hamed", with a long horizontal flourish extending to the right.

YUSUF EXHIBITS TO OPPOSITION MEMORANDUM RE HAMED CLAIM H-33

Exhibit A- Internal Accounting Records and Hamdan Merrill Lynch Statements **for 1994**

Exhibit B- Letter from Merrill Lynch confirming that Merrill Lynch Account #140-16484 **was opened in 1991** for Mohammad Hamdan

Exhibit B-1- Yusuf and United's Initial Disclosures, Aug. 1, 2013 and Notice of Service of Supplemental Disclosures, Aug. 23, 2013 with FBI Index cover sheet

Exhibit C- **March 1994** Check and Deposit Slip from Hamdan to United

Exhibit D- **1996** Internal Accounting records of loans and accrued interest for Hamdan

Exhibit E- **1997** Internal Accounting records of loans and accrued interest for Hamdan

Exhibit F- **1995** Internal Accounting records of similar loan documentation

Exhibit F-1 - Fathi Yusuf 1/21/20 Depo. excerpts and **January 1995** Daily News article

Exhibit G- Two checks **in January 1996** for \$50,000 and \$100,000 to Hamdan

Exhibit H- Collective exhibit of **1996** Incorporation Documents for Hamdan Diamond Corp.

Exhibit I- Last Will and Testament of Mohammad Hamdan dated **September 8, 1996**.

Exhibit J - Collective Exhibit of **1996** Internal accounting for Tenant Account, V.I. Community Bank Stmt's and copy of check for payment of loan to Hamdan

Exhibit K- Hamdan Death Certificate dated **April 13, 1997**.

Exhibit L- **April 22, 1997** Letter from Attorney Simpson

Exhibit M- **May 16, 1997** Documents reflecting transfer of stock shares of Hamdan Diamond in name of Fathia Yousef

Exhibit N- **May 20-21, 1997** Correspondence

Exhibit O- **April 11, 2001** Yusuf letter and payments for the Mohammad Hamdan Loans

Exhibit P- Declaration of Fathi Yusuf, 4/17/2020

Exhibit Q- Yusuf and United's Statement of Material Facts

Exhibit R- Yusuf and United's Opposition to Hamed's Statement of Material Facts

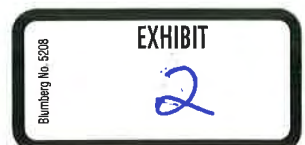
Virgin Islands Taxi Ass'n v. Virgin Islands Port Auth., 67 V.I. 643, 671-672, No. SCTCIV20160035, 2017 WL 3176122, at *11 (V.I. July 26, 2017) (The "law-of-the-case doctrine represents the soundest rule of law for this jurisdiction").



HAMED'S RESPONSE TO YUSUF AND UNITED'S STATEMENT OF FACTS

Hamed hereby responds to the Rule 56 Statement of Facts filed by Yusuf and United with its Opposition to Hamed's Partial Summary Judgment Motion re Hamed's Claim H-33, using the same numbers as Yusuf used:

1. Deny. There is no evidence in the referenced documents to the Partnership receiving funds from Mohamad Hamden.
2. Deny. The only referenced check produced as Exhibit C was signed by Fathi Yusuf, not Mohamad Hamden.
3. The referenced documents speak for themselves, including the referenced dates, but deny Yusuf had accurately summarized these documents.
4. Agree these internal accounting records make certain references as alleged, but deny they are evidence that loans were in fact made.
5. Agree that Fathi Yusuf testified as stated.
6. Deny, as the referenced document have the notations as described, but are not evidence that any such alleged loans ever were made or existed.
7. Deny, as even though the referenced document have the notations as described, they are not evidence that any such alleged loans ever were made or existed.
8. Deny, as even though the referenced document have the notations as described, they are not evidence that any such alleged loans ever were made or existed.
9. Deny, as even though the referenced document have the notations as described, they are not evidence that any such alleged loans ever were made or existed.



10. Deny, as even though the referenced document have the notations as described, they are not evidence that any such alleged loans ever were made or existed.
11. For the limited purposes of this Rule 56 motion, agree.
12. For the limited purposes of this Rule 56 motion, agree.
13. For the limited purposes of this Rule 56 motion, agree.
14. Deny Hamden ever had any such personal assets, as there is no independent records documenting such an assertion.
15. Deny, as even though the referenced document have the notations as described, they are not evidence that any such alleged loans ever were made or existed.
16. For the limited purposes of this Rule 56 motion, agree.
17. For the limited purposes of this Rule 56 motion, agree.
18. For the limited purposes of this Rule 56 motion, agree.
19. Deny. The documents submitted by Yusuf confirm this date in April of 2001, not at the end of the year.
20. Deny, as this is a self-serving assertion that is contrary to the facts as established on this record.
21. For the limited purposes of this Rule 56 motion, agree.
22. The documents speak for themselves, which do not support the characterizations contained in this "fact".
23. Agree loans were obtained by the Partnership from time to time, but not from Mohamed Hamden or Hamden Diamond Corporation, as no such loans or canceled checks showing any such loans have ever been produced.

24. Deny, as there is no evidence of any loans to the Partnership by Mohamad Hamden or Hamden Diamond Corporation, as no such loans or canceled checks showing any such loans have ever been produced.
25. Deny, as there is no evidence of any loans to the Partnership by Mohamad Hamden or Hamden Diamond Corporation, as no such loans or canceled checks showing any such loans have ever been produced. Moreover, the documents submitted by Yusuf confirm the date he references occurred in April of 2001, not at the end of the year.
26. Deny, as there is no evidence of any loans to the Partnership by Mohamad Hamden or Hamden Diamond Corporation, as no such loans or canceled checks showing any such loans have ever been produced.
27. Deny, as there is not enough information provided to determine the involvement of Ben Irvin. Moreover, as there is no evidence of any loans to the Partnership by Mohamad Hamden or Hamden Diamond Corporation, as no such loans or canceled checks showing any such loans have ever been produced, the remainder of this "fact" is denied.