

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

| | | |
|--|---|--------------------------|
| WALEED HAMED, as Executor of the |) | |
| Estate of MOHAMMAD HAMED, |) | |
| |) | |
| Plaintiff/Counterclaim Defendant, |) | CIVIL NO. SX-12-CV-370 |
| v. |) | |
| |) | |
| FATHI YUSUF and UNITED CORPORATION, |) | ACTION FOR INJUNCTIVE |
| |) | RELIEF, DECLARATORY |
| |) | JUDGMENT, AND |
| Defendants/Counterclaimants, |) | PARTNERSHIP DISSOLUTION, |
| v. |) | WIND UP, AND ACCOUNTING |
| |) | |
| WALEED HAMED, WAHEED HAMED, |) | |
| MUFEED HAMED, HISHAM HAMED, and |) | |
| PLESSEN ENTERPRISES, INC., |) | |
| <u>Additional Counterclaim Defendants.</u> |) | Consolidated With |
| WALEED HAMED, as Executor of the |) | |
| Estate of MOHAMMAD HAMED, |) | |
| |) | CIVIL NO. SX-14-CV-287 |
| |) | |
| Plaintiff, |) | |
| v. |) | ACTION FOR DAMAGES AND |
| |) | DECLARATORY JUDGMENT |
| UNITED CORPORATION, |) | |
| |) | |
| |) | |
| <u>Defendant.</u> |) | |
| WALEED HAMED, as Executor of the |) | |
| Estate of MOHAMMAD HAMED, |) | CIVIL NO. SX-14-CV-278 |
| |) | |
| |) | |
| Plaintiff, |) | ACTION FOR DEBT AND |
| v. |) | CONVERSION |
| |) | |
| FATHI YUSUF, |) | |
| |) | |
| <u>Defendant.</u> |) | |
| FATHI YUSUF and |) | |
| UNITED CORPORATION, |) | |
| |) | CIVIL NO. ST-17-CV-384 |
| |) | |
| Plaintiffs, |) | |
| v. |) | ACTION TO SET ASIDE |
| |) | FRAUDULENT TRANSFERS |
| |) | |
| THE ESTATE OF MOHAMMAD HAMED, |) | |
| Waleed Hamed as Executor of the Estate of |) | |
| Mohammad Hamed, and |) | |
| THE MOHAMMAD A. HAMED LIVING TRUST, |) | |
| |) | |
| Defendants. |) | |

**NOTICE OF SERVICE OF
SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY AS TO
INTERROGATORY NO. 16 AND 41**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley Newman Feuerzeig, LLP, that Yusuf has provided their Supplemental Responses to Hamed's Interrogatory No. 16 and 41 to Counsel for Hamed via the CaseAnywhere filing system.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: June 15, 2020

By: /s/Charlotte K. Perrell
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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of June, 2020, I served a true and correct copy of the foregoing **NOTICE OF SERVICE OF SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY AS TO INTERROGATORY NO. 16 AND 41**, via email addressed to:

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/s/Charlotte K. Perrell

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed's as follows:

1. Interrogatory No. 16 – Relating to Gross Receipt Taxes for United Shopping Center after September 2012.

Subsequent to Hamed's service of this interrogatory, depositions were taken as to United's claim Y-5 –Gross Receipts Taxes Owed to United and H-150 and H-160– Gross Receipts Taxes paid by the Partnership for United Shopping Center. During the course of those depositions, Hamed inquired as to the agreement between Yusuf and Hamed for the payment of the gross receipts taxes ("GRTs") for United Shopping Center property (owed by United and the Yusuf family) by the Yusuf-Hamed Partnership (which operates the three grocery stores as Plaza Extra-East, Plaza Extra-West and Plaza Extra-Tutu). In response, Fathi Yusuf testified in detail and his testimony is responsive to this interrogatory. Specifically, Fathi Yusuf's Deposition testimony on January 21, 2020 is responsive.

During direct examination, Fathi Yusuf testified as to the agreement made between himself and Hamed from 1986 for the store (meaning the Plaza Extra grocery store) to pay the GRT's on the Shopping Center, as well as other expenses. *See* January 21, 2020 Depo. Fathi Yusuf at 9:4 thru 33:14. Specifically, Yusuf testified that Hamed "agreed to that, that all gross receipt will be paid by the store." *Id.* at 11:14-15. This was always the arrangement and Yusuf had no reason believe that it would not have continued. *Id.*

Further, Yusuf testified that this agreement was a condition of the partnership and the agreement to pay rent, and that Yusuf and his counsel are aware of no authority, and Hamed's counsel has offered none, for the proposition that the mere filing of a lawsuit operates to rescind any terms of these agreements. Moreover, merely filing a lawsuit does not by itself prove any of the claims asserted in the lawsuit and imposes no obligation on the part of a defendant to assume the allegations are true and the claims for relief are valid, and to adjust his or her behavior on that assumption. Here, the complaint filed by Hamed did not even assert that the practice of having shopping center GRTs paid from Plaza Extra accounts was impermissible or contrary to the parties' agreements. If the complaint had made that allegation, Yusuf would have regarded the allegation as false, and would not have acceded to it. Mr. Yusuf has testified that the GRT agreement was an integral part of his partnership agreement with Hamed that was formed around 1986. *See* Yusuf's April 2014 Deposition, p. 53 and Yusuf's January 21, 2020 Deposition, p. 9-

10. The agreement to have the supermarkets pay United Shopping Center GRTs is just as much a part of the 1986 agreement as is the agreement to have the supermarkets pay United rent (an obligation which was enforced in Judge Brady's April 2015 order in an amount exceeding \$4,000,000, including amounts owed post-lawsuit.) Hamed's filing of the lawsuit in September 2012 no more should have caused United to excuse the partnership's obligation to pay GRTs than it should have caused United to forgive the rent owed to by the partnership.

As to conversations, Fathi Yusuf testified that all of the GRTs were paid from the St. Thomas store for a number of years as to all three of the stores and the Shopping Center GRTs. Nejeih Yusuf testified that he would typically pay it by going to IRB with a credit card and then getting reimbursed. At various points in time, Willie Hamed also signed checks for the collective GRTs without issue. Fathi Yusuf had no reason to believe that the filing of the lawsuit would change the agreement he reached with Hamed decades before. There was no specific conversation with Hamed relating to this agreement as to GRTs after the lawsuit was filed. However, it is also clear that even though suit was filed, this did not change the terms of the agreement. Moreover, the rental agreement remained and did not dissolve, simply because the suit was filed. Likewise, rent was due to United for the period after the lawsuit was filed and that term did not change.

In addition, United incorporates its Opposition Motion for Summary Judgment as to H-150 ("Hamed's Motion as to H-150 and 160") filed on June 11, 2020 as providing additional information responsive to Interrogatory Number 16 and the exhibits attached thereto.

2. Interrogatory No. 41– As amended by Master in March 19, 2020 Order.

In the March 19, 2020 Order, the Master limited the request to provide supplemental responses to Interrogatory No. 41 in connection with Yusuf Claim No. Y-5. Yusuf incorporates Supplemental Answers to Interrogatory 16 as responsive to this Interrogatory. Further, Yusuf incorporates his Motion for Summary Judgment as to Y-5 as responsive to this interrogatory.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: June 15, 2020

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CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of June, 2020, I caused the foregoing a true and exact copy of the foregoing **SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY** to be served upon the following via Case Anywhere docketing system:

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