

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, MUFEEED
HAMED, HISHAM HAMED, and PLESSEN
ENTERPRISES, INC.,**

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

FATHI YUSUF, *Plaintiff,*

vs.

ESTATE OF MOHAMMAD A. HAMED,

Defendant.

Case No.: **SX-2012-CV-370**

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: **SX-2014-CV-287**

Consolidated with

Case No.: **SX-2014-CV-278**

Consolidated with

Case No.: **ST-18-CV-219**

Consolidated with

Case No.: **ST-17-CV-384**

**HAMED'S REPLY TO UNITED'S OPPOSITION TO HAMED'S
MOTION FOR SUMMARY JUDGMENT RE CLAIM H-150:
RECOVERY OF GROSS RECEIPT TAXES PAID BY THE PARTNERSHIP**

I. Introduction

This is a claim by Hamed to recoup the \$70,938 in Partnership funds that Yusuf paid out of the Partnership account for the completely separate gross receipt taxes ("GRT") of the United Corporation's Shopping Center rents—from 2012 through March 8, 2015.¹ 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. Despite this, United's taxes were paid by the Partnership well after this action was commenced.

United filed its Opposition on June 6, 2020. It relies on yet another "secret", never seen or even mentioned oral agreement that only Fahti Yusuf knows of or recalls. (All of the Yusuf and Hamed sons have testified they had no knowledge of it.) As has been the pattern in this case from the beginning, Yusuf has blatantly changed facts to favor United over the Partnership. (He has even changed his present testimony as compared to his own prior depositions—to the detriment of Hamed and the Partnership—without providing any actual evidence such as documents, references in other communications or consistent corroborating testimony to support the new Yusuf/United version of events. Ultimately, their version of events is not based on even a scintilla of actual proof. For instance:

- Yusuf stated in the beginning of this case that there was no partnership between him and Hamed. Yusuf's February 2, 2000 deposition testimony stated otherwise—there was a Partnership. (**Exhibit 14**) On April 7, 2014, Yusuf eventually admitted again there was a Partnership in this case when he filed his *Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In The Alternative, To Appoint Receiver To Wind Up Partnership*.

¹ United makes up the conclusion that "Hamed implicitly acknowledges that the agreement exists but premises his claim on the argument that the filing of the lawsuit in 2012 changed the longstanding agreement." Opposition at 3. Hamed did nothing of the sort—the lawsuit filing argument was another argument in the alternative. Hamed refutes that there was an agreement for the Partnership to pay Yusuf's family-owned United Shopping Center's gross receipt taxes.

- Yusuf denied he owed Hamed the \$802,966 for the sale of the Dorothea property on St. Thomas. Special Master Ross issued an Order on July 26, 2019, finding that Hamed was entitled to the proceeds.
- United's unilateral attempt to charge additional rent to the Partnership from 2012 forward was denied on March 13, 2018 by Special Master Ross, who stated "[t]he evidence and facts surrounding Yusuf's action through United—terminating the lease with the Partnership at Bay 1, treating the Partnership as a holdover tenant, and raising United's rent significantly higher than the agreed upon rent—demonstrates a transaction prohibited by law and tainted by a conflict of interest and self-dealing." Order at 6.

United's Opposition here is just the most recent exercise in making up facts late in the game (even in contradiction of prior testimony) to suit Yusuf's desire to favor United. The facts throughout the history of this case have been manipulated by Fathi Yusuf and United to their own benefit—or have simply been made up when United and Yusuf are contradicted by testimony (sometimes *their own* testimony) and documents.

II. The New VI Supreme Court Standard—United Has Not Shown More than “Metaphysical Doubt” as to the Undisputed Material Facts

It is important to initially note that the V.I. Supreme Court recently clarified the appropriate Rule 56 standard in *Kennedy Funding Inc. v. GB Props., Ltd.*, No. 2018-0014, 2020 V.I. Supreme LEXIS 13, at *19 (V.I. May 20, 2020) (emphasis added), 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)).

* * * *

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)). *Id.* at 21.

Kennedy, the non-moving party, did not produce any written evidence supporting its contention that there was an agreement. He wanted the Court to rule based on his naked declaration. As is the case here, a totally non-responsive email chain and Kennedy's bald assertion that there was a contract did not, without any other proof or evidence, persuade the court that there were more than pleadings or “bare assertions”:

Read in the light most favorable to Kennedy, the non-moving party, the evidence Kennedy presented in response to GAD's motion for summary judgment reveals that there was no written contract signed by the parties to bid at the USMS auction, much less a written agreement that GAD would pay the USMS commission as argued by Kennedy. The email exchange does not support Kennedy's claim that Kennedy requested that GAD pay the USMS commission as part of the agreement or that GAD ever directly agreed to the terms and conditions described in the email or to pay the USMS commission. There was no evidence of a response in writing or otherwise manifesting GAD's acceptance of these terms and conditions. Additionally, there is no evidence of a written contract memorializing the terms and conditions outlined in the email correspondence. *Id.* at *23-24.

Thankfully, the Supreme Court has issued this decision now, while several of the Yusuf/United briefs based on the sole fact that “Fathi said so” remain to be decided. This case controls here.

A. Unsupported allegation of a GRT “agreement”

United and Yusuf have failed “to set forth specific facts to show a genuine issue of material fact,” which in this case is proof of an agreement between Yusuf and Hamed that the Partnership would pay the gross receipt taxes for the Yusuf family-owned United Shopping Center.

1. It is undisputed that no one, other than Fathi Yusuf, had personal 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 "Wally" Hamed had no knowledge of this purported agreement. He testified in his deposition that his father did not tell him of such an agreement. (Hamed SOF ¶ 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. (Hamed SOF ¶ 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. (Hamed SOF ¶ 6)

United, in its Opposition at 9-11 and 25, gives reasons why Mike Yusuf and Wally and Mafi Hamed would not have known about the alleged GRT agreement. It does not matter – United's explanations do not help him prove that an agreement existed—they only serve to prove that Fathi Yusuf was the only one aware of the alleged agreement.

2. It is undisputed that Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center, *according* to Fathi Yusuf. Yusuf testified in his 2020 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." (Hamed SOF ¶ 3) In an earlier 2014 deposition, Yusuf also testified that Mr. Mohammad Hamed never said anything in response to Yusuf's alleged assertion that he told Mr. Hamed that GRTs for the Shopping Center would be paid by the grocery store. (Hamed SOF ¶ 10)

United, in its Opposition at 6-8, tries to explain away Yusuf's inconvenient assertion. It is a silly argument. United contends that the context of Yusuf's testimony shows Mr. Hamed really did agree, even though he said nothing (Yusuf's words) in response to the mythical

conversation. In addition to putting words into Mr. Mohammad Hamed's mouth, United now tries to read Mr. Hamed's mind regarding this fictitious conversation and interprets his silence as "accepting" that the Partnership would pay the gross receipt taxes—something that never happened and no evidence was produced to support this non-existent conversation or alleged GRT agreement.

United further argues that Mr. Hamed should have filed an affidavit disagreeing with Fathi Yusuf's 2014 testimony regarding the alleged GRT testimony. Opposition at 11. United misunderstands its burden of proof. It is United's job to prove there was an agreement – it is not Hamed's burden to disprove an unsubstantiated alleged GRT agreement. United should have deposed Mohammad Hamed during his 2014 deposition if it thought it could make its proof.

3. It is undisputed that no writings or other tangible evidence were produced by either Fathi Yusuf or the United Corporation to substantiated this alleged GRT agreement. (Hamed SOF ¶ 2) John Gaffney, the controller for the Partnership and the United Corporation testified that he had no documentation demonstrating this alleged agreement either (Hamed SOF ¶ 27) and stated there was no way he was going to be able to prove there was a GRT agreement. (**Exhibit 15**)

United does not dispute this fact in its Opposition.

4. 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 and/or false.² Fathi Yusuf alleged that one of the reasons the Partnership agreed to pay

² United argues in its Opposition at 5 that "the Master need not even decide whether what Hamed calls Yusuf's "rationales" for the GRTs agreement were valid ones." These aren't Hamed rationales – these are the reasons Yusuf gave for asking for the alleged GRT agreement. Yusuf has the burden to prove the GRT agreement existed – showing that the

the gross receipt taxes of the United Shopping Center was very, very low, \$3 a square foot. . . . (Hamed SOF ¶ 7) Judge Brady found, as a matter of fact, that the rent was \$5.55 per square foot. (Hamed SOF ¶ 8) Further, Judge Brady stated the rental amount was \$10.12 per square foot for the time period of this claim, 2012-March 8, 2015. (Hamed SOF ¶ 9)

In its Opposition at 5-6, United claims that Fathi Yusuf testified "imprecisely" when he said that rent was \$3.00 per square foot, neglecting to mention the \$2.55 maintenance charge that was also a portion of the rent. That is almost a 100% "imprecision." This is a totally changed "fact". Further, United did not offer any proof in the way of an expert opinion, a comparative analysis showing \$5.55 was low amount of rent in comparison to the rent at other St. Croix grocery stores in 1986 or even a comparative rent analysis for other types of businesses occupying roughly the same square footage on St. Croix that Plaza Extra used. United did not address the \$10.12 per square foot charged from 2012-2015 at all. Thus, United failed to show that this rationale for the alleged GRT agreement was true.

5. It is undisputed that the second rationale, the Partnership would be allowed to take the full depreciation of the United Shopping Center on the Partnership's taxes, is unsupported. (Hamed SOF ¶ ¶10-11) No documents or other evidence substantiating this depreciation were produced by Fathi Yusuf or the United Corporation for the timeframe of this claim, 2012 to March 8, 2015. (Hamed SOF ¶ 12)

United stated in its Opposition at 5-6 that from 1986 to 2012, the United family-owned Shopping Center and the Partnership Plaza Extra stores filed joint taxes and the depreciation of the Shopping Center benefited the Partnership. United did not produce any tax returns to demonstrate that this argument was true. Further, Fathi Yusuf testified that the United

underlying rationales are not accurate further undercuts Yusuf's unsupported and unsubstantiated assertion that such an agreement took place.

Shopping Center made enough in rents to fully utilize the depreciation itself. (**Exhibit 16**) Since, according to United, the two entities filed a comingled return, United's argument that the full depreciation benefited the grocery stores is unproven. It could have fully benefited the United Shopping Center only. Thus, the second rationale for the alleged GRT agreement was not substantiated and not proved by United.

United offered two additional rationales supporting the existence of the alleged GRT agreement. United stated at in its Opposition at 6 that Fathi Yusuf gave a personal guaranty and used his home as collateral for loans that would be needed to establish the supermarket. However, no evidence was produced by United to prove these rationales – no loan documents were produced, no documents showing Yusuf's personal guaranty were produced and no testimony other than Fathi Yusuf's self-serving testimony was provided. Thus, the two additional rationales for the alleged GRT agreement were not substantiated and not proved by United.

6. It is undisputed that there was no consistency in the manner of which entity paid the GRTs for the United Shopping Center, challenging 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. (Hamed SOF ¶ 13). Wally Hamed did not write Partnership checks for the United Shopping Center's gross receipt taxes during this time because he did not have check writing authority until 1994 on the Partnership's Plaza Extra accounts, contrary to Yusuf's assertion. (Hamed SOF ¶ 15)

United's Opposition at 2 states that “[w]hen the Partnership was formed in 1986 to operate a supermarket, and an agreement was made for the Partnership to pay United rent at the large bay . . . one of its terms was that the supermarket also would pay the GRTs on rental income earned by United. That, in fact, happened during the time that Mr. Yusuf was in St. Croix managing the Plaza Extra East store for the Partnership.” United has not produced any GRT forms or cancelled checks proving the Partnership paid the Shopping Center's GRTs from

1986-1992. Further, Judge Brady did not find paying the Shopping Center's GRTs be a term of the rental agreement between United and the Partnership in his April 27, 2015 Rent Order. Rather, the law of the case states "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." Order at 9. Thus, Yusuf made no mention that the rental agreement also includes the Partnership paying for the Shopping Center's GRTs, according to Judge Brady's Order.

- **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."³ (Hamed SOF ¶14) This, of course, contradicts Yusuf's 2020 testimony that the Partnership paid the Shopping Center GRTs from 1986 to 1992.

This contradiction in testimony also undercuts Yusuf's unsubstantiated claim that the Partnership paid the Shopping Center's gross receipt taxes from 1986-1993 or that there was an alleged GRT agreement at all.

- **1993-August 2001:** The United Corporation Shopping Center paid its own gross receipt taxes from its tenant bank account. (Hamed SOF ¶¶ 16, 18 and **United Exhibits 7-10**)

Documentation substantiates that the United Shopping Center paid its own gross receipt taxes from 1993-2001. Yusuf claims he assumed Wally Hamed paid the Shopping Center's GRTs with Partnership funds. (Hamed SOF ¶ 17) However, as United's Opposition at 9-11 states, Wally Hamed did not know of the alleged agreement and Mr. Mohammad Hamed would have no reason to tell him about the agreement because the dollar amount was inconsequential. Yusuf's claim about what Wally Hamed was supposed to do with the

³ United claims in its Opposition at 8-9 that Hamed tries to "spin" and "twist" Yusuf's words regarding Fathi Yusuf's 2014 testimony. Hamed did nothing of the sort—Yusuf stated the time frame plainly. (Hamed SOF ¶ 14) Yusuf's attorneys employed spin and tried to twist Yusuf's words to make the testimony consistent. Perhaps Yusuf is having a hard time keeping his story straight because it is just that – a story.

Shopping Center's GRTs from 1993-2001 then makes no sense. How was Wally Hamed supposed to know what to do if he wasn't informed of the alleged GRT agreement? Isn't it more reasonable to believe that no alleged GRT agreement existed and that's why the Shopping Center paid its own GRTs, particularly when considering that the accounting was handled out of the St. Thomas store during this time period, where Fathi Yusuf was located?

- **2002-2012:** Sometimes the United Corporation paid its own gross receipt taxes and sometimes the Partnership paid the United Shopping Center's gross receipts. (Hamed SOF ¶¶ 19-20, **Exhibit 17**) 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. (Hamed SOF ¶ 21)

United unsuccessfully tries to undo the damage to its argument that the Partnership's Comptroller, John Gaffney did during his deposition testimony. Opposition at 12-14. The facts remain: John Gaffney testified that he saw documented evidence of both the Shopping Center paying its own GRTs and the Partnership paying the Shopping Center's GRTs out of their own respective bank accounts from 2007 to 2011. (**Exhibit 17**) In addition, during John Gaffney's review of those financial records from 2007-2011, Gaffney testified to a second treatment of the Shopping Center's GRT on the Partnership's books: "[I] believe that Margie was trying to account for it [Shopping Center's GRTs] as a due to/from item. And what was happening is occasionally it would come up and she would be pressured into expensing it [to the Partnership]."⁴ (Hamed SOF ¶ 21) United's inclusion of John Gaffney's 2016 contradictory

⁴ United states that Fathi Yusuf's pressure on Margie Soeffing to expense the GRTs to the Partnership shows evidence of an alleged GRT agreement. Opposition at 14. No, it doesn't. It shows that Fathi Yusuf was consistent in pursuing his own self-interest and self-dealing at the expense of the Partnership. Also, it highlights another one of Fathi Yusuf fibs. He testified in January 2020 that after 1992 he was not involved in the GRTs (**Exhibit 18**), but we know that is not true because he was directing Margie Soeffing to expense the Shopping Center GRTs to the Partnership at times during June 2011-June 2013.

declaration has been superseded and corrected by his 2020 deposition testimony under cross examination by Hamed that the GRTs were treated both ways during the time frame.

Opposition at 12-13

United stated “[M]argaret Soeffing, was making accounting determinations at a time before Judge Brady made his preliminary finding in April 2013 that a Partnership existed and was enforceable. . . . all of her accounting treated the supermarket business and the shopping center business as being operated under United Corporation, and she could not possibly have been making any determinations about what might or could be charged to or owed to a Partnership.” Opposition at 14. What a ridiculous argument. United's own documents show that the Shopping Center's expenses and income were separately accounted – for example, see the February 1995 Adjusted Journal Entry #2, Hamed v. United & Yusuf - Def's Production, Bates No. 0014448, showing the Shopping Center paying its own GRTs. **(Yusuf Exhibit 9)**

United makes a point of noting that Margie Soffing was employed by United from June 2011 to June 2013 and therefore her treatment of the GRTs was minimal. Opposition at 14. It doesn't matter. According to John Gaffney the GRT treatment was inconsistent. Gaffney also stated that he looked at documents from 2007-2012 and the GRT treatment was inconsistent. **(Exhibit 17)** We don't know what the treatment was between 2002-2006 because United and Yusuf failed to produce any underlying GRT documentation for 2002-2006. Despite those missing documents, however, it is undisputed that there was inconsistent treatment regarding which entity paid the Shopping Center's GRT over the course of the alleged GRT agreement: 1986-1992 (Partnership allegedly paid GRTs), 1993-2001 (Shopping Center paid GRTs), 2002-2012 (both entities paid GRTs back and forth, plus GRTs in a pending due/to from status sometimes against the Partnership and sometimes against the Shopping Center) and 2013-

2015 (GRTs in a pending due/to from status). United retains the burden of proof to prove otherwise and has failed.

Finally, United states that Waheed "Willie" Hamed signed some checks reimbursing the credit cards that were used to pay the GRTs for the Shopping Center. Opposition at 13. This act, according to United, showed that Hamed was aware of and agreed to the alleged GRT agreement. Opposition at 13. This was during the time that Yusuf was planning his take-over of the stores and to shut Mohammad Hamed out of the Partnership by claiming that there was no partnership.⁵ In August 2012, Fathi Yusuf unilaterally withdrew \$2.78M from the Partnership accounts. **(Exhibit 20)** The checks Willie Hamed signed, however, do not in any way indicate that the Shopping Center's GRTs were included. United has *not* proved that Willie Hamed had the underlying information showing the United Shopping Center's GRTs were included in the checks he signed and therefore had knowledge. The checks were issued during the time period that John Gaffney noted the then Comptroller Margie Soeffing sometimes attributed the expense to the Partnership and sometimes to the Shopping Center. Thus, we do not know 1) how this expense was treated on the Partnership's books or 2) whether Willie Hamed knew the checks he was signing included the Shopping Center.⁶

- **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. (Hamed SOF ¶ 22)

⁵ Yusuf's attorney argued before the VI Supreme Court on July 9, 2013 that there was no Partnership. Yusuf's attorney stated: ". . . at best Mohammad Hamed made a capital contribution, and in turn received an income stream similar to an annuity. But that does not make him a de jure or de facto partner." **(Exhibit 19)**

⁶ Mafi Hamed testified that the Yusufs were not presenting him with the underlying documentation showing that he was signing Partnership checks to pay for the Shopping Center's GRTs. Mafi Hamed stated that the Yusuf's were keeping accounting information from the Hameds and blocked them from accessing the Partnership accounts. Mafi Hamed noted that eventually Judge Brady told the Yusuf's they could not continue to block the Hameds from the Partnership accounts. **(Exhibit 21)**

United does not dispute this testimony in its Opposition.

B. United Misunderstands How GAAP Works

United mischaracterizes Hamed and Gaffney's statements about GAAP. Opposition at 15-16. Hamed did not contend that GAAP fails to recognize oral agreements. Rather, as John Gaffney testified, in order to properly use an oral agreement to substantiate an accounting entry when no other documentary proof is available under GAAP, the accounting treatment of the entry must be the same for the duration of the oral agreement. (Hamed SOF ¶ 26) As described earlier in this Reply, there was no consistent historical accounting treatment of the Shopping Center's GRT payments and therefore the accounting entries would not pass GAAP scrutiny. This is no surprise – the criminal case against United required United “[t]o be monitored by an independent third party certified public accounting firm assure its compliance with the tax laws of the VIBIR” (**Exhibit 22**) and John Gaffney testified under oath at the TRO hearing in front of Judge Brady that he was hired to develop and institute financial controls for United's accounting. (**Exhibit 23**)

United proposes a convoluted argument that Hamed said GAAP doesn't recognize oral agreements and therefore the oral Partnership agreement means that all of the grocery store accounting entries are illegitimate. By extension, according to United, this claim—H-150—is illegitimate. Opposition at 16. First, Hamed never opined on whether oral agreements are recognized under GAAP. (Hamed SOF ¶¶ 25-26) Second, Hamed did not say the oral Partnership agreement has any impact on whether the earlier Partnership accounting is legitimate or not under GAAP. If an expense is backed up by an invoice and a cancelled check, according to John Gaffney, the expense will pass GAAP scrutiny. (Hamed SOF ¶ 25) An oral Partnership agreement is immaterial as to whether a Partnership expense is valid under GAAP.

C. No Consideration Was Given for the Alleged GRT Agreement

United claims in its Opposition that

[i]n this case, the rent agreement between United and the Partnership as a whole (as well as the partnership agreement itself) are both supported by sufficient consideration. United agreed to lease its premises to the Partnership, the Partnership agreed in turn to pay rent and other expenses including the GRTs for United, and Hamed and Yusuf agreed to share in revenues of the supermarket business. *Id.* at 4.

This is not an accurate analysis. Yusuf is stating that consideration for the entire Partnership can be seen as consideration for ANY AND ALL OTHER AGREEMENTS AFTER 1986. 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. (Hamed SOF ¶ 2) 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. (Hamed SOF ¶¶ 2, 8) **Further, for the time period of this claim, H-150, Judge Brady found in his April 27, 2015 Order that rent from 2012-March 8, 2015 was charged at a rate of \$10.12 per square foot.** (Hamed SOF ¶ 9) Thus, on the face of Judge Brady's decision, there was no consideration for the instant claim.

Moreover, 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. (Hamed SOF ¶¶ 10-11) Yusuf, however, has not provided any evidence that the Partnership did in fact get the depreciation value on its taxes for the years 2012-2015, the time period of claim H-150. (Hamed SOF ¶ 12)

III. Hamed's Reply to United's Counter-Statement of Facts

United submitted its Counter-Statement of Undisputed Material Facts ("UCSOF") in Section V of its Opposition. Hamed admits UCSOF ¶¶ 3 and 5 for the limited purposes of this Reply. The following UCSOF ¶¶ 1-2, 4, and 6-13 are disputed for the following reasons:

UCSOF No. 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, that the lender would want his (Yusuf's) home as collateral for the loan, and would also insist on a personal guarantee, and that he (Yusuf) was the partner who would have to manage the supermarket.

Response: Hamed objects to Fathi Yusuf's claim that he put his home up as collateral for a loan to open the supermarket and that Yusuf would have to give a personal guarantee because these are unsubstantiated assertions. No loan documents were produced, no documents showing Yusuf's personal guaranty were produced and no testimony other than Fathi Yusuf's self-serving testimony was provided. Further, Yusuf's management of the supermarket was not an absolute right. Hamed, as full Partner, had the ability under RUPA to change those terms.

UCSOF No. 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 GRTs to the Virgin Islands government, including the GRTs from United's rental income from the United Shopping Center and the GRTs from store income.

Response: Hamed denies that there was any GRT agreement where the Partnership would pay the gross receipt taxes for the Yusuf family-owned United Shopping Center. See generally, Section II (A)—Unsupported allegation of a GRT "agreement" above.

UCSOF No. 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 GRT for rental income earned from tenants at the United Shopping Center was paid from Plaza Extra accounts.

Response: Hamed denies that the United Shopping Center GRT's were paid for by the Partnership. United and Yusuf have not provided any documentary proof that this occurred. See Section II (A) No. 6 above.

UCSOF No. 6. Waleed Hamed was placed in charge of the Plaza Extra East store when it reopened,⁹ 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 from United's tenant accounts, rather than Plaza Extra accounts, up to 2001.

FN 9: The Plaza Extra East store reopened in May, 1994, see Exhibit 6, excerpts of Fathi Yusuf's August 12, 2014 Declaration, p. 3, ¶6, and Waleed Hamed was placed in charge of that store, see Exhibit 3, January 22, 2020 Deposition, p. 10 (testimony of Fathi Yusuf).

Response: Hamed denies that it was a reasonable expectation that Wally Hamed would use Partnership funds to pay the Yusuf family-owned United Shopping Center GRTs because 1) there was no reason for the Partnership to pay an expense that didn't belong to it; 2) Wally Hamed testified that he had never heard of this alleged GRT agreement; and 3) United's Opposition at 10-11 "Waleed Hamed was still in college when the agreement was made, and was not present for the discussions that resulted in the agreement" and "[w]hy would Mohammad Hamed necessarily feel a need to discuss this relatively minor matter with his son when there was a multi-million dollar supermarket to run?" also makes the point that Yusuf's expectation that Wally Hamed would use Partnership funds to pay Shopping Center GRTs is nonsensical. See Section II (A) No. 6 above.

UCSOF No. 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 7**, checks, gross receipts forms, and monthly tenant account reconciliations for 1996 - 2001 showing payment of gross receipt taxes from United's tenant account from 1993 to 2001; **Exhibit 8**, Community Bank account records from 1996 showing checks corresponding to GRT payments for 1996; **Exhibit 9**, 1995 monthly tenant account reconciliations; and **Exhibit 10**, monthly tenant account reconciliations for 1997 and 1998, and corresponding Community Bank statements for 1997 and 1998.

Response: The only thing the exhibits to United's claim Y-5 show is that the United Shopping Center tenant bank account properly paid its own gross receipts. It does not prove that there was an alleged GRT agreement between Fathi Yusuf and Mr. Mohammad Hamed where the Partnership would pay the Shopping Center's gross receipts.

UCSOF No. 8. United resumed paying Shopping Center GRTs in 2001 for United's rental income from Plaza Extra Partnership accounts, and continued doing so until Fathi Yusuf became the sole owner of the Plaza Extra East store in March 2015, pursuant to Judge Brady's Wind Up Order. See **Exhibit 11**, Hamed's Chart marked as Deposition Exhibit 1 in the January 2020 depositions.

Response: This is a blatantly false statement. There are no documents from 2002-2006 to substantiate which entity paid the Shopping Center's GRTs. John Gaffney testified that there was evidence from 2007-2012 that sometimes the Partnership paid the GRTs for the Shopping Center and sometimes the Shopping Center paid its own GRTs. From 2013-2015, Gaffney testified that the expense was put in a due to/from status to be determined at a later date as to which entity should pay the Shopping Center's GRTs. See Section II (A) No. 6 above.

UCSOF No. 9. 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). Mufeed Hamed was still a "kid" when the agreement was made. See *id.* at pp. 114-115.

Response: Hamed denies there was ever an alleged GRT agreement where Fathi Yusuf and Mr. Mohammad Hamed determined the Partnership would pay the GRTs for the Yusuf family-owned Shopping Center. No one other than Fathi Yusuf knows or has testified to this alleged agreement, no written document regarding alleged agreement exists, the alleged rationales for

the GRT agreement were found to be unsubstantiated and some outright false, and the entity paying the GRTs for the Shopping Center was inconsistent over the course of the alleged GRT agreement – 1986-1992 (Partnership allegedly paid GRTs), 1993-2001 (Shopping Center paid GRTs), 2002-2012 (both entities paid GRTs back and forth) and 2013-2015 (GRTs in a pending due/to from status). United retains the burden of proof to prove the existence of a GRT agreement and has failed. See generally Section II above.

UCSOF No. 10. Waheed (“Willie”) Hamed signed checks with Nejeah Yusuf to pay for the collective GRTs for the stores as well as the rental income from the Shopping Center. A representative example are the actual checks for February and March of 2012 (before the lawsuit was filed). See Exhibit 14—Plaza Extra Partnership Checks signed by Willie Hamed and Nejeah Yusuf to reimburse for payment of the collective GRTs for the supermarket and Shopping Center paid with credits cards.

UCSOF No. 11. Hamed is aware of these payments for the collective GRTs as reflected in Exhibit 14 as the documents bear the Hamed bates numbers—HAMD604078 thru HAMD604086.

Response: Hamed denies that it was clear to Willie Hamed that the checks he signed included payment of the Shopping Center's GRTs. This was during the time that Yusuf was planning his take-over of the stores and to shut Mohammad Hamed out of the Partnership by claiming that there was no partnership and the stores belonged to his United Corporation. As an example of this intent, in August 2012, Fathi Yusuf unilaterally withdrew \$2.78M from the Partnership accounts. (**Exhibit 20**) The checks referenced by United in UCSOF 10 and 11 that Willie Hamed signed do not in any way indicate that the Shopping Center's GRTs were included. United has *not* proved that Willie Hamed had the underlying information showing the United Shopping Center's GRTs were included in the checks he signed and therefore had knowledge. The checks were issued during the time that John Gaffney noted that the then Comptroller Margie Soeffing sometimes attributed the expense to the Partnership and sometimes to the Shopping Center. Thus, we do not know 1) how this expense was treated on the Partnership's

books or 2) whether Willie Hamed knew the checks he was signing included the Shopping Center. See Section II (A) No. 6 above.

UCSOF No. 12. Additional checks signed by Waleed Hamed to Inter Ocean Insurance dating back to July 2003 further reflect the course of dealing between the partners to pay for expenses such as insurance at the Shopping Center. *Id.* at HAMD604050, HAMD604053, HAMD604058, HAMD604067, HAMD604075.

Response: Hamed refutes this statement. United has offered no proof showing that 1) the Shopping Center was included in these amounts; 2) that, if included, Wally Hamed knew the Shopping Center was covered by these checks when he signed them and 3) that this was reflects a consistent course of dealing from 1986-2015 between the Partners. Finally, there is no proof of an alleged agreement between the Partners to pay the United Shopping Center's GRT expenses. See generally Section II above.

UCSOF No. 13. The payment of the collective GRTs (as well as other expenses) with the blessing and acknowledgement of the Hameds, before the lawsuit was filed, demonstrates that the Partners acted on the agreement for the entire duration of the Partnership.

Response: Hamed refutes this entire conclusive, unsubstantiated statement. No documents or corroborating testimony accompanies this SOF. Please refer to the arguments above.

IV. Hamed's Reply to United's Response to Hamed's Undisputed Statement of Facts

United provided "Hamed's Statement of Undisputed Material Facts and United's Responses to Same" in Section V of its Opposition. For brevity's sake, Hamed is not going to recount the full back and forth of each statement of fact and response. The complete text, however, is available in United's Opposition at 21-57. Hamed does not dispute ¶¶ 11 of United's Responses to Hamed's SOF for the limited purposes of this Reply. The following United responses to Hamed's SOFs are disputed for the following reasons:

Hamed SOF ¶ 2: . . .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 3**)

United Response to Hamed SOF ¶ 2: Dispute that the GRTs agreement was made before the Partnership agreement. Mr. Yusuf made it clear in earlier parts of his testimony that the GRTs agreement was part of the agreement by which he and Hamed became partners and part of the agreement by which the Partnership would rent from United the premises at which the store would operate. See Exhibit 1, pp. 9-11. His statement that these agreements were made before there was a Partnership mean that they were made before the Plaza Extra East store began operating in 1986.

Reply: Yusuf's testimony speaks for itself. Yusuf testified that the alleged GRT agreement started before there was a Partnership. United's response "[h]is statement that these agreements were made before there was a Partnership mean that they were made before the Plaza Extra East store began operating in 1986" is counsel attempt to clean up and testify for Fathi Yusuf.

Hamed SOF ¶ 3: According to Fathi Yusuf, Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center. Fathi Yusuf testified in his 2020 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." . . .

United Response to Hamed SOF ¶ 3: Disputed. Mr. Yusuf's testimony quoted in statement of undisputed fact no. 2 unequivocally demonstrates that the agreement was made. The full context of the Yusuf testimony referenced in this statement of undisputed fact makes it clear that Mr. Yusuf simply meant that Mohammad Hamed did not object to or question him about the proposed obligation before Hamed assented to it.

Reply: United contends that the context of Yusuf's testimony shows Mr. Hamed really did agree, even though he said nothing (Yusuf's words) in response to the mythical conversation. In addition to putting words into Mr. Mohammad Hamed's mouth, United now tries to read Mr. Hamed's mind regarding this fictitious conversation and interprets his silence as "accepting" that the Partnership would pay the gross receipt taxes—something that never happened and

no evidence was produced to support this non-existent conversation or alleged GRT agreement.

Hamed SOF ¶ 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. . . .

United Response to Hamed SOF ¶ 6: Undisputed that Mufeed Hamed claims he did not know of the GRTs agreement, but disputed that Mohammad Hamed would have told him or his sons about the agreement. The GRTs were in dollar terms a relatively minor item compared to the operation of the Plaza Extra business and to Mohammad Hamed's 50% share of that income. See Exhibit 1, p. 17 (testimony of Fathi Yusuf). Mufeed Hamed testified that he was still a "kid" when the agreement was made. See *id.* at pp. 114-115.

Reply: Hamed stands by his original statement. Yusuf's attorney's speculation about what Mr. Mohammad Hamed would have shared with his sons is just that. Mafi Hamed testified that his father discussed everything with his sons with respect to what was owed to Mr. Yusuf.

Hamed SOF ¶ 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. . . .

United Response to Hamed SOF ¶ 7: Disputed, because the paragraph that purports to summarize the testimony of Mr. Yusuf does not state that he or United is offering anything in "exchange for" the promise of the Partnership to pay GRTs.

Reply: Hamed objects to United's characterization—this SOF recounts the first exchange—the allegedly low rental rate of \$3 per square foot. Subsequent Hamed SOFs relate the other alleged trade-offs.

Hamed SOF ¶ 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. . . .

United Response to Hamed SOF ¶ 8: Disputed that there is any substantive contradiction between Yusuf's January 21, 2020 deposition testimony and Judge Brady's finding, and disputes that this alleged discrepancy is material to any issues in this motion. Yusuf testified in his 2014 deposition that the rental rate of \$5.55 per square foot in the 1986 to 1994 time period was made up of two components: \$3.00/sq. ft. in pure rent charge and \$2.55/sq. foot in maintenance charges. See **Exhibit 2**, April 2, 2014 Deposition, p. 83 (testimony of Fathi Yusuf). He spoke imprecisely in this past January's depositions when he referred to the \$3.00/sq. foot as the rent without clarifying that the total rent was \$5.55 per square foot. That minor imprecision does not change the substance of his testimony in the January deposition that the rent being charged for the 1986 to 1994 time period was below market rates. See *also* Exhibit 6, August 12, 2014 Declaration of Fathi Yusuf, ¶5 (referring to the rent in the initial period as \$5.55/sq. foot rent and describing it as a below market rate).

Reply: This is another one of the "fibs" Fathi Yusuf relies on to get himself out of trouble. His minor "imprecision" is almost a 100% off. Further, United offers no corroborating evidence that the rent charged at the time was a low amount – no expert report, no comparative analysis of other grocery store rents in the Virgin Islands and no comparative analysis of other business in stores of a similar size were offered to substantiate Yusuf's statement. The only evidence is Yusuf's say so.

Hamed SOF ¶ 9: Judge Brady also found in his April 27, 2015 Order that rent from 2012-March 8, 2015 was to be charged at a rate of \$10.12 per square foot (Plaza Extra East grocery store is 69,680 square feet and rent was \$58,791.38 per month) (**Exhibit 12**, pp. 2, 11-12), the same amount of rent charged for 2004-2011. (**Exhibit 12**, p. 10)

United Response to Hamed SOF ¶ 9: Disputed. Judge Brady never found in his April 27, 2015 order that the parties agreed to a \$10.12 per square foot rental rate for the 2004 to 2011 and 2012 – 2015 periods. The agreed-upon rental rate for the 2004 to 2011 period was not a price per square foot rate, but instead a formula that calculated the annual rents as a percentage of annual sales at the Plaza Extra Tutu Park store and then applied that percentage to the Plaza Extra East sales to determine rent. See **Exhibit 12**, September 5, 2013 Declaration of Fathi Yusuf, ¶6. Judge Brady found in his April 27, 2015 Order that the parties agreed to this formula for calculating rent, and he used it to calculate rent due for the 2012 to 2015 time period. See Hamed's Exhibit 12, p. 11.

Reply: United is engaging in an exercise in semantics. It doesn't matter how the rent is characterized—one of the alleged rationales for the tradeoff of the Partnership paying the

Shopping Center's GRTs was low rent for the Partnership. Low rent was not proved by United in 1986 from United certainly did not prove that the rent for 2012-2015 was low. Therefore, those facts eliminate one of the rationales that Yusuf offered for having the Partnership pay the United Shopping Center's GRTs. United failed to provide any expert reports, comparative analysis of other grocery store rents on St. Croix or comparative analysis of other business in stores of a similar size to substantiate his claim that the \$10.12 per square foot rental rate was low.

Hamed SOF ¶ 10: 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.

United Response to Hamed SOF ¶ 10: Disputed, because the summary of the quoted testimony is inaccurate, insofar as Mr. Yusuf did not use the words "trade-off" or "exchange" to characterize depreciation of the United Shopping Center.

Reply: Again, this is an exercise in semantics. Yusuf testified that one of the rationales for why the Partnership had to pay the Yusuf family-owned Shopping Center GRTs was that the Partnership would get the full depreciation of the Shopping Center on its taxes.

Hamed SOF ¶ 12: It is undisputed that 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 2012-March 8, 2015, the time period of this claim. (**Exhibit 8**)

United Response to Hamed SOF ¶ 12: United does not dispute that the Partnership tax returns for the 2013 to 2015 tax years do not show a deduction for depreciation for the United Shopping Center. From tax years 2013, John Gaffney began preparing separate United and Partnership tax returns, and building depreciation would not be shown as a deduction on those returns as it had been when supermarket income was being reported on United Corporation returns. See Exhibit 1, p. 122.

Reply: United's response knocks out one of the justifications that United provided for explaining why the Partnership should pay the Shopping Center's GRTs. The Partnership from 2012 to 2015 did not receive the depreciation of the Shopping Center on its taxes.

Hamed SOF ¶ 14: 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. . . .

United Response to Hamed SOF ¶ 14: Disputed, because there is no contradiction. From context, it is clear that the Yusuf referred to 1994 because that is when, unbeknownst to him, the practice that had been in effect from 1986 to 1992 (of the Partnership paying United's GRT's) ceased, and United began paying its own GRTs.

Reply: This is a silly argument. Yusuf plainly testified in 2020 that the agreement began in 1986. Years earlier, he testified in 2014 that the GRT payments were not supposed to begin until 1994. That's a contradiction.

Hamed SOF ¶ 15: 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. . . .

United Response to Hamed SOF ¶ 15: Disputed. Mr. Yusuf testified that Waleed Hamed wrote some of those checks. See Exhibit 1, p. 12 (testimony of Fathi Yusuf).

Reply: Hamed stands by the testimony of Wally Hamed. United has not provided any documentation to the contrary, such as bank records showing Wally Hamed had check writing authority from 1986 to 1992 or cancelled checks with Wally Hamed's signature for that period. This is another one of Yusuf's "fibs" to enhance his version of events.

Hamed SOF ¶ 19: 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. . . .

United Response to Hamed SOF ¶ 19: Disputed, because it omits relevant testimony of John Gaffney, and fails to state that United's GRTs on shopping center income were mostly paid from Plaza Extra accounts, and that they were only occasionally paid from United tenant accounts. John Gaffney testified that

he “saw evidence of payments coming from the Plaza – and I’m going to just say Plaza cash accounts,” with an “occasional payment out of the shopping center account” during those years. Exhibit 1, p. 135; see also Exhibit 1, p. 136 (testifying that when he began working at Plaza Extra in 2012, he “was aware of the fact that they were paying for the gross receipts taxes over in St. Thomas, because that’s where [Margie Soeffing] was located and that’s where Mr. Yusuf was located at that time too”).

Reply: Hamed objects to this characterization. As stated above in the reply, according to John Gaffney the GRT treatment was inconsistent. Gaffney also stated that he looked at documents from 2007-2012 and the GRT treatment was inconsistent. We don’t know what the treatment was between 2002-2006 because United and Yusuf failed to produce any underlying GRT documentation for 2002-2006. Despite those missing documents, however, it is undisputed that there was inconsistent treatment regarding which entity paid the Shopping Center’s GRT over the course of the alleged GRT agreement – 1986-1992 (Partnership allegedly paid GRTs), 1993-2001 (Shopping Center paid GRTs), 2002-2012 (both entities paid GRTs back and forth) and 2013-2015 (GRTs in a pending due/to from status). United retains the burden of proof to prove otherwise and has failed.

Hamed SOF ¶ 20: 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. . . .

United Response to Hamed SOF ¶ 20: Disputed, because no Partnership had been determined to exist while Margie Soeffing was employed at the partnership, and she therefore could not have possibly been making any judgments about whether United GRTs paid from Plaza Extra accounts would or might later be determined to be obligations of United, on the one hand, or a partnership, on the other. Whatever accounting decisions she made during her tenure were decisions about the internal accounting of United only. Until January 2013, “all of the annual reporting of all gross receipts taxes was under that United

Corporation, whether it was a shopping center or whether it was Plaza Extra. Didn't matter. It's all United Corporation..." *Id.* at 140 (testimony of John Gaffney).

Reply: This is another meaningless argument. United's own documents show that the Shopping Center's expenses and income were separately accounted – for example, see the February 1995 Adjusted Journal Entry #2, Hamed v. United & Yusuf - Def's Production, Bates No. 0014448, showing the Shopping Center paying its own GRTs. (**Yusuf Exhibit 9**)

Hamed SOF ¶ 21: 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. . . .

United Response to Hamed SOF ¶ 21: Disputed as written. There was no judicial determination of the existence of a Partnership when Margie Soeffing was employed at United, and any due to/from treatment by her during the short period of her employment related strictly to United Corporation's internal accounting (as between United supermarket accounts and United shopping center accounts). The agreement by the parties to treat the Plaza Extra business as a Partnership for accounting purposes was made in 2014, and made retroactive to January 2013. See Exhibit 1, p. 122. John Gaffney, who was Ms. Soeffing's successor and who joined Plaza Extra in 2012, performed that Partnership accounting. See Exhibit 1, p. 122, and Exhibit 13, Declaration of Nejeah Yusuf.

Reply: Please see Hamed Reply to United Response to Hamed SOF ¶ 20. Also, Fathi Yusuf testified to the existence of a Partnership in 2000. This is another Yusuf attempt to alter the facts to suit his purposes.

Hamed SOF ¶ 25: 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. . . .

United Response to Hamed SOF ¶ 25: Dispute the heading to this statement of fact (beginning with "According to...") to the extent it is asserting that anything in GAAP precludes an oral agreement regarding which entity is to ultimately responsible for an expense from being given effect. In response to a question from counsel for Hamed about how GAAP would treat an agreement unsupported

by any paperwork, Mr. Gaffney stated that this kind of thing "happens in GAAP all the time" and is "usually covered in notes to the financial statements." Exhibit 1, pp. 146-147. Once an issue about an oral agreement is resolved by the parties or the Master, GAAP would only require that an appropriate journal entry be made to document the resolution. See *id.* at 147. In the partnership accounting that began in 2013, Gaffney handled the payments of shopping center GRTs as a due/to from item, in which the issue of whether United or the partnership was responsible for them would be resolved at a later time by the parties or the Master; and that treatment is entirely consistent with GAAP. See *id.* at 147-148.

Reply: United leaves out a step that John Gaffney said needed to happen before an expensed item that relied on an oral agreement to show it was a business-related expense passed GAAP muster:

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 3**)(emphasis added)

As is clear from the discussions in the main part of the Reply, there was no consistency in the way the United Shopping Center's GRTs were handled from 1986 to 2015.

Hamed SOF ¶ 26: 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. . . .

United Response to Hamed SOF ¶ 26: United objects to this statement of fact on the grounds that it is immaterial to the issues in this case. The accounting for the Plaza Extra supermarket business treated it as a United Corporation business

until 2013. When counsel for Hamed questioned John Gaffney in deposition about whether there was a GAAP problem in having "the partnership . . . just going out and paying somebody else's gross receipts tax," Gaffney made it clear that there was no such problem because "it was all still reported under United Corporation." See Exhibit 1, pp. 140. See also Exhibit 1, pp. 141 ("[i]t's all United Corporation," and "everything that was paid on behalf of the shopping center was a legitimate gross receipts tax for purposes of the tax return").

Also, dispute any implication that John Gaffney testified that, under GAAP, whether the United shopping center GRTs were paid from supermarket accounts or shopping center accounts determines which account they should ultimately be charged to. Gaffney testified that "how it's being paid or who's paying it" is "irrelevant" in accounting terms to which entity is charged with the expense. Exhibit 1, p. 142. He also testified that it is entirely consistent with GAAP for "differences of opinion" on these matters to "give rise to a balance sheet item that can sit there for a while [on a financial statement] until it's resolved." Exhibit 1, p. 147. GAAP only requires that once an issue is resolved, either by agreement of the parties or by the Master, that a journal entry be made reflecting the resolution. See Exhibit 1, p. 147. When asked by Hamed's counsel, "And under GAAP, how are things like that resolved," Gaffney responded, "Well, what happens is they're resolved, just like you guys are doing now, and eventually what happens is somebody makes a journal entry." *Id.* at 147. Gaffney's response to a question which asked him to reconcile his view "that this was done in a particular way consistently" with it "being charged to a due to/from account" makes clear that he does not regard the "due to/from" accounting treatment as an "inconsistent" accounting treatment. Exhibit 1, p. 143-144.

Reply: United ignores the fact that who paid for the GRTs for the Shopping Center and how the GRTs were accounted for on the books was inconsistent. According to Mr. Yusuf, allegedly the Partnership paid the GRTs from its bank account in 1982-1991 (despite no documentary evidence or corroborating evidence of this fact). United filed a claim, Y-5, showing that the United Shopping Center paid its own GRTs out of its own tenant bank account. Documentation substantiates that the United Shopping Center paid its own gross receipt taxes from 1993-2001. From 2002-2012 it was a mixed bag. John Gaffney testified that:

Q. Mr. Hartmann]. . . How about the next period, the light blue Period [2007-2011]?

A. [JOHN GAFFNEY] The light blue period, I have some recollection of records that I had reviewed in preparing for the conversion that started on January 1st of 2013.

Q. And who did you think paid those?

A. In actuality, I saw evidence of payments coming from the Plaza -- and I'm going to just say Plaza cash accounts, okay?

* * * *

A. And I also saw evidence of an occasional payment out of the shopping center account during some years that I reviewed. I just reviewed manual records back then. (**Exhibit 17**)

In addition to different entities paying the United Shopping Center's GRTs out of its own separate bank accounts, the accounting treatment was different too. According to Gaffney, sometimes the former controller booked the expense against the Shopping Center and sometimes, when pressured by Fathi Yusuf, she booked the GRTs against the Partnership.

(Hamed SOF ¶ 21)

Hamed SOF ¶ 27: 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. . . .

United Response to Hamed SOF ¶ 27: Undisputed that there is no writing documenting the agreement to pay the United Shopping Center GRTs. Dispute that GAAP has any relevance to the legal issue of whether the oral agreement was made, and dispute any implication that John Gaffney testified that that it has any such relevance. In response to a question from counsel for Hamed about how GAAP would treat "a theoretical agreement entered into [in] 1986 with a guy who's dead," with "no paperwork" and no "consistent history" to document the agreement, Mr. Gaffney stated that this kind of thing "happens in GAAP all the time" and is "usually covered in notes to the financial statements." Exhibit 1, pp. 146-147.

Reply: Hamed has made no claim as to whether GAAP accepts oral agreements or not. According to John Gaffney, an expense made pursuant to an oral agreement that has no underlying documentation as would be present in an oral agreement situation is fine if the accounting treatment over a course of years or months is consistent—that would survive a GAAP audit. (Hamed SOF ¶ 26) United twists Gaffney's testimony on this point. United makes it sound like Gaffney said it was okay to have inconsistent history on how the item, pursuant to the oral agreement, is handled and it will still pass GAAP muster. Gaffney said nothing of the sort – he said the treatment has to be consistent over a course of years or months. (Hamed

SOF ¶ 26) He also said “[t]here can be differences of opinion that give rise to a balance sheet item that can sit there for a while until its resolved.” (**United Exhibit 1**, p. 147) What is critical is the difference of opinion has to be *documented* on the balance sheet from the beginning -- it can't be treated differently over a course of years and then be noted on the balance sheet for the last three years to still be considered consistent and in compliance with GAAP.

Hamed SOF ¶ 28: It is undisputed that the payment of the gross receipt taxes was not handled consistently on the Partnership's books. . .

United Response to Hamed SOF ¶ 28: Disputed generally because there were no “partnership books” maintained before January 2013, and hence there was no handling of gross receipts taxes on partnership books before 2013 by Margie Soeffing or anybody else. See Exhibit 1, pp. 122 (testimony of John Gaffney). Until January 2013, “all of the annual reporting of all gross receipts taxes was under that United Corporation, whether it was a shopping center or whether it was Plaza Extra. Didn't matter. It's all United Corporation...” *Id.* at 140 (testimony of John Gaffney).

The 1986-1992 statement is undisputed, except that it would be more precise to say that GRTs for the United Shopping Center were paid from Plaza Extra accounts. There was no partnership from the standpoint of bank accounts, accounting and tax returns as all were in the name of United Corporation.

The 1986-1993 statement is disputed. With respect to the reference in Mr. Yusuf's testimony to the year 1994, Mr. Yusuf's testimony in his 2014 deposition and in the January 2020 deposition is that the Partnership agreement and agreement of the Partnership to pay rent were formed around 1986, and that one of its conditions was that United's Shopping Center GRTs would be paid from Partnership's Plaza Extra accounts. See Exhibit 2, pp. 24-25, 27, 54. It makes no sense to interpret the reference to 1994 as meaning that a GRTs agreement entered in 1986 would not take effect until 1994. What Mr. Yusuf meant was that, starting in 1994, United began paying its shopping center GRTs from tenant accounts, rather than Plaza Extra accounts, contrary to its prior practice and contrary to what it was “supposed” to do under the 1986 agreement.

The 1993 to 2001 statement is undisputed.

The 2002 to 2012 statement is disputed in part, and most of it is immaterial to the issues raised by this motion. Margaret Soeffing was only employed by Plaza Extra from June 2011 to mid-2013, so any accounting she performed was for that period only, and not the entire 2002 to 2012 time period. See Exhibit 13, Declaration of Nejeah Yusuf. Furthermore, what Gaffney actually testified to on examination by Hamed's counsel is that he did not know at all whether United's GRTs from 2002 to 2006 were paid for out of United's Plaza Extra accounts or

its landlord-tenant accounts. See Exhibit 1, p. 135. As for the accounting for the 2007 to 2012 period, as noted above in this response, all of the Plaza accountants for that period treated the supermarket business and the shopping center as all part of United Corporation for accounting purposes. How Marjorie Soeffing treated payments made from Plaza Extra accounts for shopping center GRTs as an internal United accounting matter during the 2 years she was employed by United has little, if any, relevance to the issues raised by this motion. To the extent it is relevant at all, if Mr. Yusuf asked Ms. Soeffing to account for them for United's internal purposes as a Plaza Extra expense, that would be entirely consistent with the existence of an agreement to have those GRTs paid out of Plaza Extra accounts.

The 2013 to 2015 statement is undisputed.

Reply: This ground has been well covered in the main body of the Reply and is incorporated by reference here. The "no partnership" books argument falls apart because it was clear that the United Shopping Center accounted for its expenses and income separately from the grocery store. For example, see United's own document – the February 1995 Adjusted Journal Entry #2, Hamed v. United & Yusuf - Def's Production, Bates No. 0014448, showing the Shopping Center paying its own GRTs. (**Yusuf Exhibit 9**) The payment of the Shopping Center's GRTs was not handled consistently over time.

Hamed SOF ¶ 30: On May 15, 2018, Yusuf and United claimed in their response to interrogatory number 16 that the Partnership agreement between Hamed and Yusuf dictated that the profits would be divided 50-50 after the deduction of expenses. Yusuf stated that he made the decisions for the Partnership as to when the rent and other expenses would be reconciled and paid to United. Finally, Yusuf and United said that the filing of the lawsuit between the two partners was of no consequence on their agreement because the filing of Hamed's lawsuit "did not enable him to continue receiving the benefits of the partnership." . . .

United Response to Hamed SOF ¶ 30: United objects to this purported statement of fact on the grounds that it is immaterial to issues raised by this motion. Subject to that objection, United states that Hamed has quoted correctly interrogatory 16 and the response to it, but disputes that Hamed's paraphrasing of the response is accurate or fair.

Reply: This is a clear SOF. Yusuf and United opined that the filing of Hamed's lawsuit the filing of Hamed's lawsuit on September 17, 2012 "[d]id not enable him to continue receiving the benefits of the partnership without the burdens he agreed to from the outset." As is

shown above, those benefits never materialized - the rent during this time period was \$10.12 per square foot and no proof was provided that this amount was below the market rate. The second "benefit," the Partnership obtained the full value of the Shopping Center's depreciation on its taxes, was also untrue. United admitted in its brief that the Partnership did not receive any depreciation from 2013-2015 because it filed its taxes separately from United. United also did not provide any documentation showing that the Partnership received the benefit of the full depreciation of the Shopping Center for the earlier times either-in fact, Yusuf testified that the Shopping Center made enough in rents to recoup all of the depreciation itself. The final two "benefits" the Partnership allegedly received - Yusuf's personal guarantee and his home as collateral for the opening of the supermarket-were not substantiated with any documentation either. Thus, for the 2012-2015 time period of this claim, the Partnership did not receive any of the alleged benefits of the fictitious GRT agreement.

Hamed SOF ¶ 33: Hamed argued. . .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.)

* * * *

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. (**Exhibit 10**)

United Response to Hamed SOF ¶ 33: United objects to this purported statement of fact on the grounds that it states a legal conclusion, and on the additional grounds that it is immaterial to any issues raised by this motion. Subject to that objection, United states that the legal conclusion asserted by Hamed regarding 26 V.I.C. § 71 is incorrect, as explained more fully above, at pages 16-17, in the paragraph that immediately precedes this table of SUMF and responses. RUPA provides that all § 71 rights may all be varied by the partnership agreement, and Judge Brady has already found that under the partnership agreement, Yusuf was the managing partner and in charge of the finances of the partnership. See *Hamed v. Yusuf*, 69 V.I. 168, 175, n.4 (V.I. Super. 2017) (finding that “Yusuf acted as the managing partner” and that Hamed was “completely removed from the financial aspects of the business”) and 69 V.I. 189, 215 (V.I. Super. 2017) (“As managing partner, . . . [i]t was Yusuf’s responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners”).

Reply: United is under the mistaken impression that RUPA does not allow Partners to make changes to previous agreements. Once Hamed filed his lawsuit in 2012, any prior or then existing voluntary consent allowing Yusuf to unilaterally act for the Partnership or for the benefit of United Corporation using Partnership funds ended.

Hamed SOF ¶ 34: In a June 26, 2018 Order, Judge Brady. . .

ORDERED that the Master is directed to proceed to conduct such evidentiary proceedings as are deemed appropriate to make factual findings necessary to permit full consideration of the claims of the partners, including the determination of the duties, responsibilities, benefits and obligations of each partner, including whether any benefits are due United and its shareholders, in light of the partners' agreements, history and course of dealing; and to report and make recommendations regarding the claims and the distribution of partnership assets in light of such findings (**Exhibit 11**, p. HAMD661981)

United Response to Hamed SOF ¶ 34: Disputed to the extent that Hamed is saying that the three factors enumerated by Judge Brady are the only factors that should be considered by the Master.

Reply: Hamed stands by the language of the Order.

Hamed SOF ¶ 35: The Partnership paid \$70,938.04 in gross receipt taxes for the Yusuf family-owned United Shopping Center from 2012-April 2015.

United Response to Hamed SOF ¶ 35: Disputed. Counsel for Hamed conceded in deposition that he has adjusted that figure downward to \$69,000. See Exhibit 1, p. 83.

MR. HARTMANN: This JVZ is your accountant's -- excuse me, our accountant's adding up of the these amounts. This didn't -- wasn't in existence yet at the time that the claim was filed, so the corrected number is probably the 70,193. Excuse me.

(Respite.)

I'm sorry, the 69,000 is the correct number.

This was done first. The Yusufs submitted additional documents. The number was corrected downwards to the 69,000.

Reply: Hamed's Counsel became confused regarding the total amount in the back and forth of the deposition. **Exhibit 13** substantiates the \$70,938.04 amount – the exhibit contains all of the back-up documentation showing how Hamed arrived at the \$70,938.04 figure.

V. Conclusion

Again, this is an open-and-shut example of Yusuf simply taking funds. United has provided nothing more than metaphysical doubt as to the disputed material facts to support its contention that there was an agreement between Fathi Yusuf and Mr. Mohammad Hamed. There was no consideration for the alleged purported agreement—the rental rate for the Plaza Extra Shopping Center was *not* the “very, very low, \$3 a square foot” Mr. Yusuf testified to under oath and no evidence was provided by the Defendants supporting the contention that the Partnership took the full depreciation of the United Shopping Center on its taxes. Further, no evidence, other than Fathi Yusuf's self-serving testimony, was offered up as proof that Yusuf gave a personal guarantee or used his house as collateral to establish the Plaza Extra East store. Finally, there is no evidence of consistent historical treatment or course of dealing as to which entity paid the United Shopping Center's GRTs. Sometimes the United Shopping Center paid its own GRTs, sometimes the Partnership paid them and sometimes the GRTs were

booked as a "due/to item" on the Partnership's accounting, meaning the party responsible for the payment would be determined at a later date.

No hearing is necessary, and, thus, judgment should enter with the return of \$70,938 paid in GRTs for the United Shopping Center to the Partnership.

Dated: July 1, 2020



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Tele: (340) 773-8709

Fax: (340) 773-8670

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 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 "*Hamed's Reply to United's Counter-Statement of Facts*" and "*Hamed's Reply to United's Response to Hamed's Undisputed Statement of Facts*" per the revised requirements. If the Master would prefer the Facts section broken out, it can be filed as an Exhibit.



LIST OF REPLY EXHIBITS

Exhibit Number	Description
Exhibit 14	February 2, 2000 Deposition testimony of Fathi Yusuf re there was a Partnership between Yusuf and Mohammad Hamed
Exhibit 15	January 21, 2020 Deposition testimony of John Gaffney re no way to prove there was an oral agreement between Fathi Yusuf and Mohammad Hamed re United Shopping Center GRTs
Exhibit 16	January 21, 2020 Deposition testimony of Fathi Yusuf stating the United Shopping Center could have used all of the building's depreciation on its taxes
Exhibit 17	January 21, 2020 Deposition testimony of John Gaffney re Shopping Center GRT financial accounting treatment for 2007-2012
Exhibit 18	January 21, 2020 Deposition testimony of Fathi Yusuf re no involvement in GRTs once he moved to St. Thomas at the end of 1992
Exhibit 19	July 9, 2013 testimony before VI Supreme Court by Yusuf's attorney re Hamed was not a partner and only was entitled to an "annuity"
Exhibit 20	Partnership \$2.78 million check to Fathi Yusuf
Exhibit 21	January 21, 2020 Deposition testimony of Mafi Hamed re Yusufs keeping Partnership financial records from the Hameds
Exhibit 22	Plea agreement requiring United have its financials monitored by an independent accounting firm
Exhibit 23	January 31, 2013 Hearing testimony by John Gaffney stating he was hired by the United Corporation to develop financial controls

Exhibit 14

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

AHMAD IDHEILEH,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 156/1997
)	
UNITED CORPORATION and)	
FATHI YUSUF, Individually,)	
)	
Defendants.)	

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

EXHIBIT 14

Cheryl L. Haase
(340) 773-8161

COPY

A-P-P-E-A-R-A-N-C-E-S

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St. Thomas, USVI 00802

By: Elmo Adams

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47 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: Bethaney J. Vazzana

Also Present:

Ahmad Idheileh

Cheryl L. Haase
(340) 773-8161

FATHI YUSUF -- DIRECT

1 ~~two partner left, Mr. Hamed. You know, these two guys, they~~
2 ~~left, my two nephew, they was your partner and my partner. I~~
3 ~~give you a choice. If you pay penalty with me and pay the~~
4 ~~interest with me, whatever they left is for me and you. But~~
5 ~~if I must pay them the one-fifty penalty and pay them~~
6 ~~12 percent, then Plaza Extra Supermarket will stay~~
7 ~~three-quarter for Yusuf and only one-quarter for you.~~

8 He says, Do whatever you think is right. I
9 tell him, You want my advice? I be honest with you. You
10 better off take 50 percent. So he took the 50 percent.

11 Q. Not to cut you short, Mr. Yusuf, but we have to
12 play with time, and I appreciate the history as far as
13 Plaza Extra St. Croix and United Corporation, but I want to
14 focus primarily right now on your relationship with
15 Mr. Idheileh.

16 There came a time that the two of you entered
17 into talks about Plaza Extra on St. Thomas?

18 A. May I interrupt you, sir? I cannot build a roof
19 before a foundation. The problem is you ask me who I am,

20 ~~where I come from. I am explaining myself. I want to show~~
21 ~~to you and the court that Mohammed Hamed is way before~~
22 ~~Plaza Extra was opened with me, he was my partner. And~~

23 Mr. Idheileh, he himself knows, because the money he lend me
24 when I open up Plaza Extra, he was getting paid from Wally.

25 ~~I'm a person, if I run a business, I want to~~

Cheryl L. Haase

HAMD201345

FATHI YUSUF -- DIRECT

1 MR. ADAMS: Let the record indicate I'm
2 showing Mr. Yusuf a copy of the Joint Venture Agreement.

3 A. I sees Mr. Idheileh and myself and Notary Public,
4 and I believe it's a witness underneath. I don't know.

5 Q. (Mr. Adams) Now --

6 A. Notary Public someplace else, and the same
7 witness, and my signature repeated again on a different page.
8 My son. Yeah, my son is the president of United Corporation.

9 Q. Now, sir, the Joint Venture Agreement is between
10 whom?

11 A. Between -- if you have to look at it this way, --


12 Q. No, no, I'm looking --

13 A. -- between me, my partner and him.

14 Q. No, Mr. Yusuf. Let us look at the Joint Venture
15 Agreement that was signed.

16 A. Yeah, I seen it. United Corporation.

17 Q. Thank you.



18 A. But I want you please to be aware that my
19 partner's with me since 1984, and up to now his name is not
20 in my corporation. And that -- excuse me -- and that prove
21 my honesty. Because if I was not honest, my brother-in-law
22 will not let me control his 50 percent. And I know very
23 well, my wife knows, my children knows, that whatever
24 Plaza Extra owns in assets, in receivable or payable, we have
25 a 50 percent partner.

CERTIFICATE

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

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I, CHERYL L. HAASE, a Registered Professional Reporter and Notary Public for the U.S. Virgin Islands, Christiansted, St. Croix, do hereby certify that the above and named witness, Fathi Yusuf, was first duly sworn to testify the truth; that said witness did thereupon testify as is set forth; that the answers of said witness 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 Certified Court Reporter on this the 4th day of February, 2000, at Christiansted, St. Croix, United States Virgin Islands.

CERTIFIED TRUE COPY
Cheryl L. Haase
Cheryl L. Haase, RPR

Cheryl L. Haase
(340) 773-8161

Exhibit 15

**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
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(340) 773-8161

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By: Joel H. Holt

and

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For the Defendants:

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By: Charlotte Perrell

Also Present: Michael Gelardi, Videographer

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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~~

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 16

**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
16**

**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.
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U.S. Virgin Islands 00820
(340) 773-8161

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

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By: Joel H. Holt

and

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By: Carl J. Hartmann, III
Kim Japinga

For the Defendants:

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

By: Charlotte Perrell

Also Present: Michael Gelardi, Videographer

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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 **Q.** 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~~

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.

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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 17

**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,)
)
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) Case No. ST-18-CV-219
)
HAMED/YUSUF PARTNERSHIP,)

Defendant.)

**EXHIBIT
17**

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

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By: Joel H. Holt

and

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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

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JOHN GAFFNEY -- CROSS

1 ~~Q. (Mr. Hartmann) Okay. Sir, looking at this chart,~~
2 I'm telling you, somebody paid somebody else's taxes for
3 that entire period of time. Do you -- under this agreement,
4 do you have any idea who paid whose taxes?

5 **A.** No.

6 **Q.** Okay. Now look at the white section, the years
7 for the white section.

8 Do you have any idea who paid whose taxes for
9 that period? Whether the partnership paid for the tenant
10 account or the tenant account paid for the partnership, do
11 you have any idea?

12 ~~**A.** No. From 2002 to 2006, no.~~

13 **Q.** Okay. How about the next period, the light blue
14 period? [2007-2012]

15 **A.** The light blue period, I have some recollection of
16 records that I had reviewed in preparing for the conversion
17 that started on January 1st of 2013.

18 **Q.** And who did you think paid those?

19 **A.** In actuality, I saw evidence of payments coming
20 from the Plaza -- and I'm going to just say Plaza cash
21 accounts, okay?

22 **Q.** Okay.

23 **A.** And I also saw evidence of an occasional payment
24 out of the shopping center account during some years that I
25 reviewed. I just reviewed manual records back then.

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.

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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 18

**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.)

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Defendants.)

KAC357 Inc., Plaintiff,)

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Consolidated with
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HAMED/YUSUF PARTNERSHIP,)

Defendant.)

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18**

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MAHER "MIKE" YUSUF, WALEED "WALLY" HAMED, NEJEH YUSUF,
MAFEED "MAFI" HAMED, AND JOHN GAFFNEY**

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Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
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2132 Company Street, Suite 3
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(340) 773-8161

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By: Joel H. Holt

and

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By: Carl J. Hartmann, III
Kim Japinga

For the Defendants:

Law Offices of
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By: Charlotte Perrell

Also Present: Michael Gelardi, Videographer

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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.

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.

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My Commission Expires:
June 28, 2023

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

Exhibit 19



Supreme Court Oral Arguments

Fathi Yusuf , et al.,

v.

Mohammad Hamed, et al.

July 9, 2013

***Transcribed by:
Cheryl L. Haase, RPR***

EXHIBIT

19

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FATHI YUSUF AND UNITED)
CORPORATION,)
)
Appellants/Defendants,) S.Ct. Civ No. 2013-CV-0040
)
v.) Re: Super. Ct. Civ No. 2012/370
)
MOHAMMAD HAMED By His)
Authorized Agent WALEED)
HAMED,)
)
Appellee/Plaintiff.)

For the Court:

Justice Rhys S. Hodge, Presiding
Justice Maria M. Cabret
Justice Ive Arlington Swan

For the Appellant: Joseph DiRuzzo, III, Esq.

For the Respondent: Joel H. Holt, Esq.
Carl Hartmann, Esq.

Transcription 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

1 ~~JUSTICE CABRET: Well, let~~

2 JUSTICE SWAN: Yes. Go ahead, Justice
3 Cabret.

4 JUSTICE CABRET: Thank you, Justice Swan.

5 You, or Mr. Yusuf, concedes that there was an
6 oral agreement at the inception. How -- how does he term
7 this oral agreement? What does he call it?

8 He denies that it's a partnership --

9 MR. DIRUZZO: Sure. Well, I'll phrase it to
10 say, first of all, based on the record before us --

11 JUSTICE CABRET: But isn't he -- I'm sorry.
12 Let me make myself clear.

13 MR. DIRUZZO: Okay.

14 JUSTICE CABRET: I think he's denying it at
15 this stage, but he has previously indicated that there was a
16 partnership. And in your, as you began your argument, you
17 indicated, well, there was an agreement. I want to know,
18 what happened to the agreement? When did they agree to
19 disagree?

20 MR. DIRUZZO: Well, I -- I will put it this
21 way: First of all, the statements from Fathi Yusuf that it
22 was a quote, unquote, partnership, that is a statement of a
23 layperson not versed in the laws.

24 Second, and directly answering your question,
25 the nature of the relationship, the best way I could phrase

1 this, a very difficult way to characterize it, is at best
2 Mohammad Hamed made a capital contribution, and in turn
3 received an income stream similar to an annuity. But that
4 does not make him a de jure or de facto partner.

5 ~~You want~~ if the Court wants to look at it
6 as a financing arrangement, that's fine. If you want to
7 look at it as an annuity, that's fine too. But all the
8 hallmarks of a partnership are not there. The mutual
9 control, all the things that you think of when you're a
10 typical partner between two attorneys in a law firm, that is
11 not here. And that's why, at the bottom of this case, the
12 allegations that Fathi Yusuf and Mohammad Hamed had an oral,
13 well, partnership agreement, are highly, highly disputed.

14 JUSTICE HODGE: Okay. You -- you call it a
15 joint venture. Are you now backing away from that, even, --

16 MR. DIRUZZO: Well, that --

17 JUSTICE HODGE: -- and now it's an annuity?

18 MR. DIRUZZO: Well, that's -- that's my best
19 way to -- to describe or couch, which is why we characterize
20 it as an almost uncharacteristic or uncharacterizable
21 agreement. It almost defies your typical definitions
22 because it is so out of the ordinary, an agreement that by
23 its -- Mr. Mohammad Hamed's own terms, was to last forever.
24 a definite term of forever.

25 ~~But taking a step back, Your Honors, going~~

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

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I, CHERYL L. HAASE, REGISTERED PROFESSIONAL REPORTER,
Christiansted, St. Croix, U.S. Virgin Islands, do
hereby certify that the foregoing transcript was transcribed
to the best of my ability.

Dated this 13th day of December, 2013.

Cheryl L. Haase, RPR

Exhibit 20

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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,)

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By: Joel H. Holt

and

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By: Carl J. Hartmann, III
Kim Japinga

For the Defendants:

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DNF
Law House
P.O. Box 756
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By: Charlotte Perrell

Also Present: Michael Gelardi, Videographer

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MAFEED "MAFI" HAMED -- REDIRECT

1 ~~even before -- this agreement happened even before this~~

2 **A.** I was a kid at the time, Counsel.

3 **Q.** That's right, you were a kid at the time.

4 **A.** Yes.

5 **MS. PERRELL:** All right. I don't have any
6 further questions regarding this.

7 ~~**MR. HARTMANN:** Okay. I got one follow-up.~~

REDIRECT EXAMINATION

9 **BY MR. HARTMANN:**

10 **Q.** Counsel showed you the document that you have
11 open, it's JVZ-001003. And you said that you didn't recall
12 ever seeing this document, but you did recall seeing the one
13 with your handwriting on it, right, which was in 2014?

14 **A.** Yes.

15 **Q.** Do you recall if there was a particular reason you
16 weren't seeing these types of documents in 2013?

17 **A.** Yes.

18 **Q.** And what was that?

19 **A.** They would keep information from us. They would
20 take us out of the accounts. They would hold back anything
21 that would have to do mostly with administration of the
22 business, they locked us out.

23 **Q.** Okay. And did there come a time when the Court
24 told them they couldn't do that anymore?

25 **A.** Yes.

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 22

IN THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiffs,

vs.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf
WALEED MOHAMMAD HAMED,
aka Wally Hamed
WAHEED MOHOMMAD HAMED,
aka Willie Hamed
MAHER FATHI YUSUF,
aka Mike Yusuf
NEJEH FATHI YUSUF
ISAM YUSUF, and
UNITED CORPORATION,
dba Plaza Extra,
Defendants.

CRIMINAL NO. 2005-15F/B

RECEIVED
2010 FEB 26 PM 4:00
DISTRICT OF THE VIRGIN ISLANDS
ST. THOMAS, VI.

PLEA AGREEMENT

I.

INTRODUCTION

~~This agreement is entered into by and between defendant United Corporation, d/b/a Plaza Extra (hereinafter "United"), Thomas Alkon, Esquire, and Warren B. Cole, Esquire, Attorneys for United; Fathi Yusuf Mohamad Yusuf, Waleed Mohammad Hamed, Waheed Mohammad Hamed, Maher Fathi Yusuf, NejeH Fathi Yusuf, and the Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands (collectively referred to as the "Government").~~

~~The parties agree to the following terms:~~

VII.

PLEA AGREEMENT SUBJECT TO COURT APPROVAL

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties acknowledge and agree that United should be ordered to pay the fine, restitution, and monetary penalties contained within this Plea Agreement and should be sentenced to a term of probation of one year.

If the Court does not adopt the agreement of the parties pursuant to Rule 11(c)(1)(C), both United and the Government reserve the right to withdraw from this Plea Agreement.

VIII.

PARTIES' SENTENCING RECOMMENDATIONS

A. **Fine.** The parties agree that the maximum statutory fine of \$5,000 should be imposed.

B. **Monetary Penalty:** The parties propose that the monetary penalty to be imposed pursuant to paragraph III.B. above be imposed in an amount between \$250,000 to \$5,715,748.

C. **Costs of Prosecution:** The Government proposes that costs of prosecution be imposed as discussed above in paragraph III.A.2. United contests said number and the categories of costs to be awarded.

D. **Restitution.** The parties propose the restitution amounts and ranges as set forth in Exhibit 1, as referenced in paragraph III.A.3. above.

E. **Terms of Probation**

1. United agrees to a term of probation of one year and agrees to be monitored by an independent third party certified public accounting firm to

assure its compliance with the tax laws of the VIBIR. United agrees to cooperate with the independent third party in carrying out such party's obligations under this agreement. The selection of a certified public accounting firm as the independent third party will be expressly approved by the Government prior to the beginning of the term of probation. If the parties cannot reach agreement on a third party, the independent third party will be selected by the Court.

2. The independent third party shall make quarterly reports to the Government, the Court, and United of United's financial condition, results of business operations, tax filings, tax payments, and accounting for the disposition of all funds received.

3. United shall submit to:

(a) a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the independent third party; and

(b) a periodic review of financial statements and tax returns of United.

~~4. United shall be required to notify the court or independent third party immediately upon learning of (a) any material adverse change in its business or financial condition or prospects, or (b) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against United, or any investigation or formal inquiry by governmental authorities regarding United's financial operations.~~

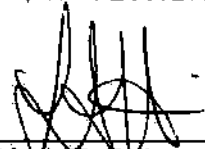
~~with appropriate officer and directors of United and that United fully understands~~
its meanings and effect.

The Government agrees to the terms set forth in this Plea Agreement.

RONALD SHARPE
UNITED STATES ATTORNEY

JOHN A. DICICCO
ACTING ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE, TAX DIVISION


Dated: 2/26/10



Mark F. Daly
Lori A. Hendrickson
Kevin C. Lombardi
Trial Attorneys


The defendant United Corporation agrees to the terms set forth in this Plea Agreement.

Dated: 2, 26/10



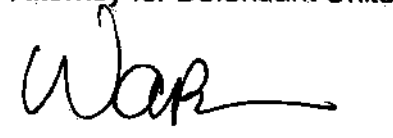
Thomas Alkon, Esq.
Attorney for Defendant United Corporation

Dated: 2/26/10

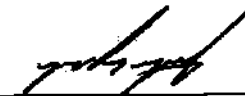



Warren B. Cole, Esq.
Attorney for Defendant United Corporation

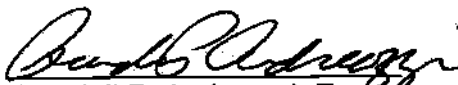
Dated: 2/26/10




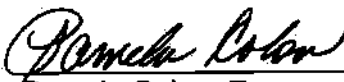
Warren B. Cole, Esq.
Attorney for Defendant's unindicted shareholders

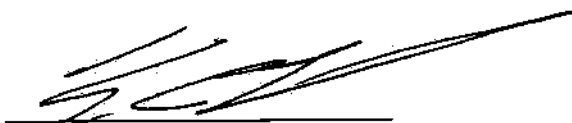
Dated: 2-26-10 
Maher Fathi Yusuf
President, Defendant United Corporation

Dated: 2/26/10 
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10 
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10 
Derek M. Hodge, Esq.
Attorney for Defendant Nejeih Fathi Yusuf

Dated: 2/26/10 
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: 2/26/10 
Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

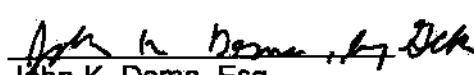
Dated: 2/26/10 
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Exhibit 23

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

MOHAMMED HAMED By His) CIVIL NO. SX-12-CV-370
Authorized Agent WALEED HAMED,)
) ACTION FOR DAMAGES
Plaintiff,) INJUNCTIVE AND
) DECLARATORY RELIEF
v.)
)
FATHI YUSUF and UNITED)
CORPORATION,)
) JURY TRIAL DEMANDED
Defendants.)
_____)

Thursday, January 31, 2013
Kingshill, VI 00850

The above-entitled action came on for Hearing on a
TRO, before the Honorable DOUGLAS A. BRADY, Judge, in
Courtroom Number 211, commencing at approximately
9:12 a.m.

SANDRA HALL
REGISTERED PROFESSIONAL REPORTER
OFFICIAL COURT REPORTER II
(340) 778-9750 EXT. 6701

EXHIBIT
23

A P P E A R A N C E S:

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kglenda@cameronlawvi.com

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1 ~~Q And just briefly, what were your job duties?~~

2 A Well, I managed an office of approximately 11
3 controllers. We had markets throughout the U.S. and
4 some overseas. It was 275 fast food restaurants,
5 mostly KFCs, Pizza Huts, Taco Bells, etc.

6 Q Do you know an individual by the name of Ayman
7 Al-Khaled?

8 A I sure do.

9 Q How do you know him?

10 A He applied for a position as controller in May
11 of 2010 and I hired him.

12 Q Is that Kazi Management?

13 A Yes, it was; 2011, it was.

14 Q And how would you characterize Mr. Ayman
15 Al-Khaled's performance as controller?

16 ~~A I characterize it as very good.~~

17 Q Okay. Sir, let's fast forward to your current
18 employment with United Corporation. Do you remember
19 when you were hired?

20 A Yes.

21 Q When was that?

22 A It was late September and I arrived on October
23 7th.

24 Q And in what capacity were you hired? What
25 were your job duties supposed to be?

1 A I was coming in as an outside consultant
2 initially to evaluate their system of internal
3 controls.

4 ~~Q And what are internal controls?~~

5 A I'm sorry?

6 Q Could you define what internal control is?

7 A Internal controls are basically the policies
8 and systems in place to ensure that all of the assets
9 and liabilities are safeguarded in the company.

10 Q Are you familiar with the term GAAP?

11 A Yes.

12 Q What does GAAP stand for?

13 A Generally accepted principles.

14 Q And do internal controls have any relationship
15 to GAAP?

16 A They sure do.

17 Q How so?

18 A Well, basically the reliance on financial
19 statements was built upon a system of internal
20 controls.

21 Q Sir, you said financial statements. Could you
22 define financial statements for us?

23 A GAAP financial statements generally consist of
24 the balance sheet and income statement and statement of
25 ~~cash flows.~~

CERTIFICATE OF REPORTER

I, SANDRA HALL, RPR, Official Court Reporter II of the Superior Court of the Virgin Islands, Division of St. Croix, do hereby certify that I reported by machine shorthand, in my official capacity, the TRO Hearing in the case of *Mohammad Hamed v. Fathi Yusuf and United Corporation, SX-12-CV-370*, in said Court, on the 31st day of January, 2013.

I FURTHER CERTIFY that the foregoing 130 pages are a true and accurate computer-aided transcription of my stenotype notes of said proceedings.

I HAVE HEREUNTO subscribed my name, this 1st day of February, 2013.

Sandra Hall, RPR

Digitally signed by Sandra Hall, RPR
DN: CN = Sandra Hall, RPR, C = US, O = Superior Court
of the Virgin Islands, OU = Court Reporters Division
Date: 2013.02.01 17:06:34 -04'00'

Sandra Hall, RPR
Official Court Reporter II