

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

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

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

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

Additional Counterclaim Defendants.)

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

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

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

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)
THE MOHAMMAD A. HAMED LIVING TRUST,)

Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
PARTNERSHIP DISSOLUTION,
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

**UNITED'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY
JUDGMENT RE: CLAIM Y-8 and OPPOSITION TO HAMED'S CROSS-MOTION**

FOR SUMMARY JUDGMENT ON THIS CLAIM

INTRODUCTION

Hamed's Opposition to United's Motion for Partial Summary Judgment on Claim Y-8 advances three principal arguments why United's motion should be denied and summary judgment granted instead to Hamed on this claim. Those arguments are: 1) that United Corporation ("United") did not timely present this claim for resolution by the Master; 2) that the Master has already found that all claims that Yusuf makes against the partnership are necessarily "tainted by a conflict of interest and self-dealing"; 3) that in any event United cannot make out a viable claim for unjust enrichment because it cannot prove that the income from water sales exceeded the incidental costs incurred by the partnership in selling the water; and 4) that United's claim for conversion of the water sales proceeds fails because a person in charge of a business "cannot steal from himself as a partner." Neither these arguments nor the other ancillary ones made by Hamed withstand scrutiny. The Master should grant partial summary judgment to United, and at an appropriate time conduct a short trial or evidentiary hearing to determine the damages to which United is entitled on Claim Y-8.

ARGUMENT

I. United's Claim was Timely Asserted on September 30, 2016.

Hamed first argues that United should be barred from seeking recovery from water sales because it September 30, 2016 Accounting Claims and Proposed Distribution Plan described this as a claim belonging to Yusuf personally, rather than United. *See* Hamed's Opposition at p. 2. Hamed's assertion is frivolous. Yusuf's Accounting Claims and Proposed Distribution Plan of September 30, 2016 (the "Claim") stated that "all debts of the Partnership must be paid prior to any distributions to the Partners," and noted that "the remaining debts include the unpaid rent obligations, with interest, due to United . . . as well as other obligations to United discussed in more

detail below.” **Exhibit 1**, Yusuf’s Accounting Claims and Proposed Distribution Plan Exhibit 1, p. 2. Section III, entitled “Outstanding Debts of the Partnership” lists debts A-G of the Partnership owed to United. *See id.* at pp. 6-10. Section III.F. describes the claim for water sales, and states unequivocally that it is a United claim. *See id.* at p. 9. The Claim document was styled as “Yusuf’s Accounting Claims and Proposed Distribution Plan” because of Judge Brady’s directive that each partner submit a proposed accounting and distribution plan. *See* Judge Brady’s January 9, 2015 Order Adopting Final Wind Up Plan, p. 8 (“Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan...”). The fact that Yusuf did what he was asked to do by preparing and submitting a plan identifying all known claims against the partnership, including third party claims, obviously does not transform that which he clearly identified as a United claim into his own claim. Nor can it possibly mean that United’s water revenue claim was not timely presented to the Master.

II. United’s Claim for Water Revenues Does Not Entail a Conflict of Interest.

United next mischaracterizes the Master’s prior ruling on a United claim by saying that the Master ruled “that when the Liquidating Partner, Yusuf, asserts a claim against his Partnership, such conduct is ‘tainted by a conflict of interest and self-dealing’.” Hamed’s Opposition at p. 12; *see also id.* at 5. The ruling Hamed is referring to is the Master’s March 11, 2018 Order denying United’s Claim against the Partnership for Holdover Rent. In that Order, the Master did not announce the sweeping (and patently absurd) rule that any time United asserts a claim against the Partnership it will have engaged in conduct involving a conflict of interest and self-dealing.¹ Nor

¹If merely asserting a claim or defending a claim could be treated as a breach of a partner’s duty of loyalty to the other partner, then Hamed would plainly be guilty of such breaches by having made false factual statements in these claims proceedings to advance his own interests at the expense of Yusuf’s. Among these would be Hamed’s denial in motion practice before Judge Brady that the partnership owed United rent – a denial which Judge Brady found to be untrue. *See Exhibit 2*, Judge Brady’s April 29, 2015 Order Awarding Rent, p. 9 (rejecting as false “Plaintiff’s denial that the parties had an agreement regarding past rents”).

did the Master suggest as a general matter that by entering an agreement with the partnership – and then attempting to enforce its terms – Yusuf (through United) would be engaged in a conflict of interest and self-dealing. RUPA specifically permits a partner to “lend money to and transact other business with the partnership,” and expressly states that that the “rights and obligations of the partner” in such a transaction are subject to the same “applicable law” that would govern transactions between the partnership and a non-partner. *See* 26 V.I.C. § 74(f). Indeed, Judge Brady has previously enforced such a transaction to the tune of more than \$6,000,000. *See* Exhibit 2, p. 12 (awarding rent to United in the amount of \$5,234,299.71 plus \$58,6791.38 for 18 months). What the Master held in his March 11, 2018 order was that the particular relief United sought – treating the partnership as a holdover tenant and assessing a “rent significantly higher than the agreed upon rent” – was inconsistent with the terms of the rent agreement between United and the partnership, and hence that this relief was “prohibited by law and tainted by a conflict of interest and self-dealing.” *See* Master’s March 11, 2018 Order at p. 6, n.3.

In making that ruling, the Master was careful to distinguish between the rent that Judge Brady had ordered to be paid to United for the 2012 to 2015 time period (over Hamed’s objection that nothing was owed),² and the additional holdover rent that Yusuf was seeking for that same period, which he concluded was not recoverable. *See id.* at p. 6., n.3. Nothing in that narrow

²In his April 29, 2015 order granting rent, Judge Brady ordered the partnership to pay rent for the period 1994 to 2003, and recognized that United had been paid rent for the rent term 2004 to 2011. *See* Exhibit 2, pp. 2, 9-10. In addition, Judge Brady also ordered rent paid to United for the period from January 1, 2012 to March 2015 (when the partnership surrendered ownership of Plaza Extra East to Mr. Yusuf) under the same rate the parties agreed to for the 2004 to 2011 period. *See* April 27, 2015 Rent Order, p. 11 (“Therefore, the Court will order the Partnership to pay United the sum of \$1,234,618.98 for rent from January 1, 2012 through September 30, 2013, Plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until the date that Yusuf assumed sole possession and control of Plaza extra —East”). Hamed had argued against an award of rent to United for either the 1994 to 2003 period or the 2012 to 2015 period.

holding, based on the particular facts and circumstances surrounding United's holdover rent claim, has any applicability to the motions and cross-motion regarding its Y-8 claim.

III. United has Shown that it is Entitled to Partial Summary Judgment on its Unjust Enrichment Claim.

A. The Undisputed Facts Show Overwhelmingly that There are No Fact Issues Precluding Entry of Partial Summary Judgment in United's Favor.

Hamed states in his opposition and cross-motion that he admits United's Statement of Material Fact No. 1, which asserts that "[t]he land and the improvements that make up the United Shopping Center are owned in fee simple by United, not the partnership," and cites to Judge Brady's April 27, 2015 Order Awarding Rent (Exhibit 2 to this Reply) in support of that fact." *See* Hamed's Opposition, p. 5; United's Motion for Partial Summary Judgment, p. 7. This admission is critical to United's motion on all three theories of recovery, because it establishes that the real estate improvements used to generate and hold the water – the wells that were dug on the property to obtain underground water, the shopping center roof that collected rainwater, the cisterns that stored it, and the standpipes that pumped it – were all owned by United, not the Partnership. And that in turn can only mean that the water collected and stored by these components belonged to United, not the partnership. Hamed's conclusory claims in his declaration that the water belonged to the Partnership, and not United, are insufficient to create an issue of fact regarding ownership of the water that was sold to third parties and used by the Partnership in the supermarket operations.³

³Hamed asserts that insurance proceeds from a policy paid for by the partnership were used to rebuild the Plaza Extra East store, but that is immaterial to United's ownership of the rebuilt store and improvements. Consistent with many commercial leases, Mr. Yusuf has testified that the partnership was obligated under its rent agreement with United to pay for insurance on the building. *See Exhibit 4*, April 2, 2014 Deposition of Fathi Yusuf, pp. 53-54.

Hamed also denies that Mr. Yusuf gifted the revenues from water sales to Mohammed Hamed with the proviso that he send 50% of the proceeds to relatives in the Middle East who were in need of financial assistance. *See* United’s SUMF No. 11, at p.9 of its Motion, and Hamed’s Response to same at p. 6 of its Opposition. That denial is entitled to very little, if any, weight for several reasons.

First, as Mr. Yusuf’s testimony in the January 22, 2020 deposition makes clear, the gift was made by Fathi Yusuf in conversations with Mohammed Hamed when the Plaza East store was being rebuilt after the fire.⁴ Waleed and Mufeed Hamed would not necessarily know about the substance of this conversation between their father and Fathi Yusuf regarding this gift of water revenues and the condition that it be used to provide assistance for needy relatives.

Second, while Hamed denies that Mr. Yusuf gifted them any of the water sales revenues, he does concede that the “sons on both sides stated that they knew it [water sales revenue] was to be split 50/50,” and he further acknowledges that Hamed and Yusuf used their half of the proceeds for these charitable purposes. *See* Hamed’s Opposition at p. 5, n.2; see also Exhibit 3, January 22, 2020 Deposition, p. 47 (testimony of Waleed Hamed). The testimony of Waleed and Mufeed Hamed that each partner was to use 50% of the water revenues for charitable donations is consistent with Mr. Yusuf’s testimony regarding the gift and its conditions.⁵ If, as Hamed now claims, the water belonged to the Partnership, rather than United, then why would the partners

⁴United cited to that deposition testimony (at pages 7, 8, and 10) and attached it as Exhibit 3 to its Motion for Partial Summary Judgment on Claim Y-8.

⁵Mr. Yusuf and Mufeed Hamed testified that the 50% of water sales revenues gifted to Hamed were sent to needy families in the Middle East, while Waleed Hamed testified that it was used for charitable purposes generally. *See* Exhibit 3, p. 10 (testimony of Fathi Yusuf); pp. 134-135 (testimony of Mufeed Hamed); and p. 47 (testimony of Waleed Hamed). The relevant testimony of Mufeed Hamed is quoted in Hamed’s Opposition at p. 5, n.2. Waleed’s slightly different recollection regarding the use of the water sales revenue is immaterial to United’s arguments in support of partial summary judgment.

have singled out that particular component of supermarket sales for donation to relatives abroad? Mr. Yusuf has an explanation for that, which is not only plausible but consistent with the fact that the real estate improvements which collected and stored the water were owned by United. Hamed offers no alternative explanation for why he committed to send 50% of water sales revenues to relatives in the Middle East.

Moreover, Hamed's response to United's SUMF also supports Yusuf's testimony that the gifting arrangement ended in 2004. Statement of Fact number 11 in United's SUMF reads as follows:

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

United's Motion, p. 9 (italics added). Hamed's response only disputed the portion of SUMF 11 stating that revenues from water sales belonged to United and that Yusuf gifted one half of the water revenues; it did not dispute the portion which states that "there has been no such gifting since at least 2004":

It is disputed that the water or the revenues from any sales belonged to United or that Yusuf "gifted" half of these revenues to Hamed from 1994 to 2004 so long as the funds would be "re-gifted" to relatives in the Middle East. See Exhibit 1.

Hamed's Opposition, p. 6.

Hamed's lack of any meaningful response to another critical fact supporting Mr. Yusuf's account also undercuts the position taken in his Opposition. The revised rent agreement that United and the partnership entered in 2004 used a rent formula that indisputably included a component for water charges—by charging the partnership for water in its rent payment to United, it is clear that United owns the water and the partnership starting paying for its water use after 2004. *See United's Motion at pp. 4-5.* That formula used took the sum of rent, water charges and property taxes paid

by the partnership to the landlord for the Plaza Extra Tutu Park store in St. Thomas for 2004 to 2011, divided that sum by total sales for that store for the period, and then multiplied the resulting percentage by store sales at Plaza Extra East to determine rent for that store for the same period. See **Exhibit 5**, Rent Formula for Plaza Extra East. In early 2012, Hamed voluntarily paid United rent for Plaza Extra East 2004 to 2011 period that was calculated according to that formula, and Judge Brady used the formula to calculate rent owed to United for post-2011 periods. See *supra*, p. 4 & n.2.

On the basis of that formula, and information showing water charges paid by the partnership to the landlord for the Plaza Extra Tutu Park store,⁶ United is able to calculate the water charge component of rent charged by United (and paid by the partnership) for the 2004 to 2011 rental term for Plaza Extra East. As shown in the table attached to this Reply as **Exhibit 7**, under this formula, United charged the partnership \$189,664.65 for Plaza Extra East water use in the 2004 to 2011 rent period.⁷ This fact is important because it shows a consistency in the way United treated water within each of the two rental periods – i.e., within the 1994 to 2004 rental term, and within the 2004 to 2011 term. For the 1994 to 2004 rent term, United provided water to the partnership free of charge, and gifted to Hamed half of the water sales revenue (*i.e.* partnership water usage not charged and water sales revenue gifted to be donated). See Exhibit 3, pp. 16-19 (testimony of Fathi Yusuf). For the rent term beginning in May 2004 and ending in 2011, by contrast, United stopped gifting

⁶See **Exhibit 6**, Records from General Ledger showing water charges paid to landlord for Plaza Extra East store.

⁷Exhibit 7 tabulates total water sales for the 2004 to 2011 time period, and divides that by Plaza Extra Tutu Park sales for that same period. The resulting percentage – .0713% – is then applied to Plaza Extra East sales, which yields \$189,664.65 in water charges paid to United by Plaza Extra East. Since United was unable to locate data showing 2004 and 2005 water sales charges paid to the Plaza Extra Tutu Park landlord, water charges for those years were treated as zero, for purposes of this tabulation. This means that the \$189,664.65 sum actually understates the true amount of water charges paid to United by Plaza Extra East in the 2004 to 2011 time period.

50% of water sales revenue to Hamed and began charging the partnership for use of United's water as a portion of its rent obligation.

In his response to United's SUMF numbers 12 and 13 (at page 6 of its Motion), Hamed denies without any genuine support the indisputable fact that the lease agreement was revised from a square-foot rate to a rate using a formula that charged for water usage. He then then asserts lamely that charging the partnership for water usage by Plaza Extra East in the 2004 to 2011 period is "irrelevant" to the issues raised by United's motion in any event: As Hamed asserts,

It is denied that any modification of the lease payments was made that included a new agreement that the Partnership would now be charged for water by United. *See Exhibit 1. It is also irrelevant to this "water claim" whether United supplied water to the Plaza East Supermarket for use, as this "Y-8" claim seeks damages for all water sales, not water usage by the Plaza East Supermarket.*

Hamed's Opposition, p. 6 (emphasis in original). Hamed fails to recognize the significance of the fact that the partnership was paying for water use—the partnership *paid* for water use because they did not own the water, their landlord, United owed it. Hence, Hamed's denial makes no sense because the rent formula as a matter of mathematical necessity charged Plaza Extra East – the partnership, for water usage, and did so in an amount, \$189,664.65, that is hardly insignificant. *See Exhibit 7.* While Hamed cites to the Waleed Hamed declaration attached to his Opposition as support for that denial, the declaration contains no statement refuting the fact that the rent formula for Plaza Extra East partnership rent to United that went into effect in 2004 included a component for water charges paid by the partnership for water use at the Plaza Extra Tutu Park store. And far from being irrelevant, the fact that the rent from 2004 included a water charge is relevant to United's motion for summary judgment on the Y-8 claim in at least two respects. First, it reinforces United's ownership of the water. Hamed would surely not have accepted a revised rent agreement that charged Plaza Extra East for water if the partnership actually owned the water. Second, as already mentioned, it shows that United acted consistently in 2004 by now stopping the practice of giving

away 50% of its water. For the rental term beginning in May of that year, United stopped letting the partnership use water free of charge, and it stopped gifting one half of the water sales revenues to Hamed.

B. Hamed's Arguments Against Entry of Partial Summary Judgment are Unavailing.

Despite the overwhelming evidence that water revenues were owned by United and were no longer gifted to the Hameds from 2004 forward, Hamed argues that the partnership's retention of water sales revenue for that period does not meet the elements of unjust enrichment. He first argues that United cannot prove that the partnership benefitted from the sales of water because it cannot prove that water sales revenues exceeded the incidental expenses the partnership incurred in connection with water sales. Hamed's Opposition at pp. 13-14. The expenses cited by Hamed include: having a Plaza Extra employee turn on a switch to release water into the customer's truck (SUMF #10, Opposition, p. 8); having a Plaza Extra cashier or other employee collect payments for water for those customers paying by cash or check at time of water fill-up (SUMF #17, Opposition, p. 8); and having a Plaza Extra employee send out a bill to those customers who were billed for water purchases (SUMF #18, Opposition p. 9).

United's water delivery service customers would typically buy up to 5,000 gallons of water each, at a cost of 1.5 cents per gallon (or \$75 per fill-up of a water truck). See **Exhibit 8**, Declaration of Mike Yusuf, ¶ 1. The employee time required of an employee to collect cash payments at the cash register, and to turn on and off a switch (when the employee, rather than the driver operated that switch) was less than a minute, and the allocation of their wages or salary for those tasks would be *de minimus*. See *id.* at ¶ 2. The time to have the computer generate an invoice for those customers who were billed would not have taken more than a few minutes, and likewise was *de minimus*. See *id.* at ¶ 6. These expenses cannot possibly have exceeded the water sales revenues.

Hamed also simply asserts that the partnership also paid: unspecified repair costs “for the two new cisterns,” unspecified repair and maintenance costs for the standpipe, the portion of WAPA bills attributable to running the pumps, and taxes on water revenue. *See* Hamed’s Opposition, pp. 8-9, SUMF # 12, 13, 16, 22, 23. The testimony of Mike Yusuf is that the two new cisterns that were constructed when the shopping center was rebuilt after the fire (which he marked as D-1 and D-2 on a sketch used at deposition) held water that was used by the Plaza Extra supermarket in its operations. *See* Exhibit 3, pp. 94, 114 (testimony of Mike Yusuf). The water sold to third party customers came from a cistern that was constructed when the shopping center was originally built. *See id.* at 96-97; 116-117 (testimony of Mike Yusuf). So even if Hamed had been able to identify particular repairs to those cisterns that were paid by the partnership, they would be irrelevant to United’s unjust enrichment claim. As for the standpipe and pumps, Hamed is also unable to identify particular repairs for either that were allegedly paid for by the partnership, let alone quantify them in dollar terms. He is also unable to identify the portion of the store WAPA bill that was attributable to running the pump or to show why it would be more than a few dollars per fill-up at most. Hamed has not even come close to creating a genuine issue of material fact regarding whether the partnership received a benefit from the sale of water to third parties.

Hamed’s conclusory assertions that costs exceeded revenues are implausible for another reason. If, as Hamed now claims, the water was actually owned by the partnership and any sales proceeds therefore belonged to it, why would he have acquiesced to the partnership engaging in an unprofitable side business for ten years? There is no evidence that Mohammad or Waleed Hamed ever expressed a concern to Mr. Yusuf that the sale of water was a losing proposition for the partnership, and should therefore cease. Nor would Mr. Yusuf have any reason to engage in and continue an unprofitable side business, whether this business was United’s or, as Hamed claims, the partnership’s.

As for the 4% (and later 5%) gross receipts and the income taxes paid on water sales, United agrees these would have to be deducted from sales to determine the damages awardable to United on its unjust enrichment claim at trial. United also agrees that the gross sales would have to cut in half to arrive at recoverable damages because United's principal, Fathi Yusuf, has already received one half of the net income from water sales. Mike Yusuf testified that he installed the standpipe used to deliver water to the trucks of United's water customers. *See* Exhibit 3, p. 110. United acknowledges that it would be appropriate to deduct the allocation of Mike Yusuf's salary, based on the time he spent on that installation, to arrive at an appropriate measure of damages for unjust enrichment at trial.

All United has to show in order to obtain partial summary judgment on its unjust enrichment claim is to show that there was some net benefit to the partnership from sales of water; it need not prove at this stage the quantification of that benefit in dollar terms. United has satisfied that burden, thereby entitling it to partial summary judgment. At the very least, United has raised genuine issues of material fact regarding the benefit element of its unjust enrichment claim.⁸ The quantification of that net benefit in dollar terms can await a short trial of that issue before the Master. Even at trial United will not have to prove the dollar value of the benefit with mathematical certainty, but need only establish a reasonable basis for its damage computation. *See Gray v. Tri-Way Construction Services, Inc.*, 210 P.3d 63, 71 (Idaho 2009) ("the value of any benefit unjustly

⁸As for Hamed's cross-motion for summary judgment, it goes without saying that Hamed's recitation of incidental costs to the partnership of generating water sales has not satisfied its burden as moving party on the cross-motion to show that the partnership has received no benefit from the retention of water sales revenue. *See Gray v. Tri-Way Construction Services, Inc.*, 210 P.3d 63, 71 (Idaho 2009) (reversing lower court for granting summary judgment to party alleged to have been unjustly enriched because the court erroneously required the plaintiff to prove the amount of enrichment in order to avoid summary judgment). In defending against Hamed's cross-motion, United is "not required to prove the amount in which [the partnership] was enriched." *Id.* at 71 (Idaho 2009). Instead "the burden [is] on [Hamed] to show that it ha[s] not received any benefit that it would be inequitable to retain." *Id.* at 71. Hamed has not met this burden, and there is plainly no basis for a grant of summary judgment in its favor and against United on claim Y-8.

received” by the defendant “need not be proven with mathematical precision,” but instead need only be proved to “a reasonable certainty”) (Idaho 2009); *Meister v. Mensinger*, 230 Cal. App. 4th 381, 401 (Cal. App. 2014) (“[r]ecovery [for unjust enrichment] is not prohibited just because the benefit cannot be precisely measured,” and it is only necessary that there “be some reasonable basis for the computation”).

Hamed also cites a lone Arizona case for the proposition that where a partner commingles his funds with partnership funds, there is a presumption that these funds belong to the partnership that the commingling partner has the burden to overcome. Hamed’s Opposition, p. 18. What Hamed is apparently arguing here is that United should be penalized because it did not open a separate bank account (or add a separate store safe) for the deposit of water revenues only, and instead opted for the more efficient measure of leaving water sales revenues in supermarket accounts, and then later making adjustments to Hamed’s and Yusuf’s shares of store proceeds to deduct from Hamed’s share 50% of water revenues.

Hamed’ argument fails for several reasons. There is no statutory provision in RUPA that so provides, and Hamed has not even attempted to show, under a *Banks* analysis, why the Virgin Islands Supreme Court would adopt it as a common law rule to supplement RUPA. And even if the rule were adopted here, it is very doubtful that it would have any application to a case like this one in which a corporation operated a shopping center and a supermarket business, and in essence the corporate shield was later pierced to retroactively treat the supermarket business as a partnership between the shareholder of the company and a non-shareholder.

In any event, the Master need not decide this issue now, because even if the presumption adopted in Arizona were adopted in the Virgin Islands, and even if it applied to this case, its only conceivable significance would be at trial, not at the summary judgment phase. To prevail on its motion for partial summary judgment, United only has the burden to show the existence of a

benefit; it does not have the burden of quantifying that benefit. United has amply met that first burden for the reasons discussed above. Conversely, Hamed, as the movant on its cross-motion, has the burden of showing that any benefit was used up by incidental expenses, something he has not even come close to showing. At trial, United will have the burden of showing a reasonable basis for its sales calculation in order to obtain a damage recovery. Whether United or Hamed will have the burden of proof as to the amount of incidental expenses that must be deducted from the sales revenue is a question that the Master can defer until the trial.

Hamed also insists that United's unjust enrichment claim must fail because "there is no evidence in this record the Plaza East Partnership thought that United/Yusuf would expect the Plaza East Partnership to reimburse him for the total amount of all water sales after over 10 years of total silence." Hamed's Opposition, p. 14. That argument misses the mark because Yusuf is a partner and he knew that United owned the water and hence that any net sales revenue belonged to it. RUPA makes it clear that knowledge of a fact by any partner constitutes knowledge of that fact by the partnership. See 26 V.I.C. §3(f). Even if Yusuf's co-partner Hamed can honestly say that he did not know that United owned the water revenue and was therefore entitled to the proceeds of water sales, Hamed's ignorance of that fact would be irrelevant under RUPA.

Moreover, in *Walters v. Walters*, 60 V.I. 768, (V.I. 2014), the Virgin Islands Supreme Court, noting that different jurisdictions require different levels of awareness of a benefit, stated that it was reserving decision on "the extent of the knowledge requirement." *Id.* at 779 n.12. Here, if Hamed were actually unaware of the ownership of the water, his lack of knowledge of that fact would be inexplicable, since he had to know that all of the real estate at United Shopping Center, including the water collection infrastructure, belonged to United. It is doubtful that the Supreme Court would hold that a party who disregarded the obvious in failing to recognize that his business entity was using another entity's property to its benefit can rely on that to defeat an unjust enrichment claim.

IV. United Has Also Shown that it is Entitled to Partial Summary Judgment on its Conversion Claim.

Hamed claim that United's conversion claim is "absurd," "desperate" and a species of "doubletalk" because it is based on the notion that a partnership in which Mr. Yusuf was a partner expropriated water from another company in which Mr. Yusuf was a principal. *See* Hamed's Opposition at p.16. Hamed is flailing away at a straw man. United of course recognizes that that the partnership lawfully sold the water and took custody of the proceeds for United. The act of conversion was in failing (at Hamed's insistence) to turn over the proceeds belonging to United when it made demand for them.

It is well-accepted that "[t]here are two general classes into which conversions are grouped: (1) those where the possession is originally wrongful, and (2) those where it is rightful ... The second class comprises those where the possession, originally rightful, becomes wrongful by a wrongful detention." *Jarvis v. Lieder*, 978 A.2d 106 (Conn. 2009); *see also Whitaker v. Merrill Lynch*, 36 V.I. 75, 84 (V.I. Terr. 2014) ("an action for conversion of property is considered complete when the property is first tortiously taken or *retained by the defendant*") (emphasis added) (citing to RESTATEMENT (SECOND) OF TORTS § 899 cmt c (1979)). In the case of property belonging to one party that is initially in the lawful possession of another, there must generally be a demand for a return of the property or the proceeds of its sale before it can be deemed to have been wrongfully retained. *See Addie v. Kjaer*, 51 V.I. 463, 474 n.9 (D. V.I. 2009) ("Conversion generally requires that the plaintiff demand the return of the property and that the defendant refuse to return it").

Hamed argues that United's conversion claim must fail because "the Plaza East Partnership conducted the water sales operation with United/Yusuf's full knowledge and blessing," and because with United's blessing it used a portion of "Yusuf's 50% share (as well as Hamed's 50% share) of the Partnership funds to sell water, account for it, pay the taxes due and then split[]

the profits, if any, with Yusuf himself.” Hamed’s Opposition, p. 17. United agrees that the water it owned was sold by the partnership with its permission, that the incidental expenses and taxes were paid by the partnership on water sales income, and that Yusuf has received his 50% share of the profits that remain. While true, none of this is relevant to United’s claim that 100% of the profits that remain belong to United, and that by wrongfully retaining 50% of them at Hamed’s instance in the face of United’s demand for their return, the Partnership has converted funds that belong to United.

All that Hamed has succeeded in showing is that a conversion claim that United is not making (the conversion of the water itself) would be defective. He has not advanced any arguments that would defeat United’s actual conversion claim or even created a genuine issue as to any of the elements of that claim.

V. Hamed’s Statute of Limitations Defense is Without Merit.

Hamed argues that the portion of United’s unjust enrichment and conversion claims dating from 2004 to September 30, 2010 are barred by the six-year statute of limitations, because United did not demand return of water sales revenue until September 30, 2016, when Yusuf submitted his own claims and United’s.⁹ Hamed’s Opposition at p. 18. Hamed’s argument is based on a fundamental misunderstanding of the accrual dates for these claims for statute of limitations purposes.

The statute of limitations on a cause of action begins to run from the date the cause of action accrued, which ordinarily is the date upon “occurrence of the essential facts that give rise

⁹The case law does not require a party to explain why it did not make an earlier demand. It is worth noting that United had no reason to believe in 2010 that Hamed would later argue that, despite being held in the name of a corporation owned solely by Yusuf and his family members, the sale of water generated from United’s real property and improvements at the United Shopping Center belonged to a partnership of which he was a 50% member. United did file a counterclaim on December 23, 2013, and if it is somehow important to the Master’s resolution of the limitations defense, the counterclaim filing can also be treated as a demand.

to that cause of action.” *Anthony v. FirstBank V.I.*, 58 V.I. 224, 230 (V.I.2013) is mistaken. As then Judge and now Justice Cabret held in *Whitaker v. Merrill Lynch, supra*, 36 V.I. at 84, “the statute of limitations begins to run when the cause of action accrues,” which in the case of conversion is “when the property is first tortiously taken or retained by the defendant.” And as already mentioned, the property that is the subject of the alleged conversion cannot be treated as wrongfully retained unless and until a demand is made for its return and then disregarded. Likewise, the Virgin Islands Supreme Court has stated that the “statute of limitations began to run on claims of quantum meruit and unjust enrichment when defendants refused demand for payment, as this was the earliest point in time that the plaintiffs could have suffered an injury.” *Vanterpool v. Government of the Virgin Islands*, 63 V.I. 563, 594 n.19 (V.I. 2015) (citation and internal marks omitted). While this statement was *dicta*, Supreme Court *dicta* is an important and reliable predictor of how the Court would rule on this issue. Since both United’s conversion and unjust enrichment causes of action accrued upon a demand for payment that was not complied with, no portion of either United’s conversion or unjust enrichment claim is time-barred.¹⁰

VI. United’s Responses to Hamed’s Counter-Statement of Undisputed Material Facts.

¹⁰Hamed’s insistence that United “should have filed suit...in 2012 before the SOL expired on the 2006 sales” is unavailing, both for this reason and a second, alternative reason. *Id.* at p. 4, n.3. United did in fact file a counterclaim asserting restitution, unjust enrichment claims on December 23, 2013, and Hamed has admitted previously that, for statute of limitations purposes, the counterclaim is treated as filed on the date that Hamed filed his complaint against United and Yusuf – namely, September 17, 2012. See **Exhibit 9**, United’s and Yusuf’s December 23, 2013 Counterclaim, Count III (Conversion); Count IV (Restitution) and Count VI (Unjust Enrichment); **Exhibit 10**, Defendant’s May 13, 2014 Memoranda re: Partial Rule 56 Relief re: Statute of Limitations, p. 3. Thus, even if either the conversion or the unjust enrichment claim were somehow deemed to have accrued before (and without regard to) United’s demand for return of the water revenues, the only time-barred claims would be those arising from water sales that took place more than 6 years before September 17, 2012 – i.e., those occurring between January 1, 2004 and September 17, 2006. In the event the Master decides it is necessary to reach this alternative argument regarding the statute of limitations, United respectfully requests that before doing so he give the parties an opportunity to brief the issue of whether the discovery rule or equitable tolling rules would protect United’s 2004 to 2006 claims or any other claims that would be treated as time-barred under this backup statute of limitations analysis.

The following, in table format, is United’s Rule 56 Response to Hamed’s Counter-Statement of Undisputed Material Facts that was made a part of his Opposition and Cross-Motion regarding claim Y-8¹¹:

	HAMED’S COUNTER-SUMF	UNITED’S RESPONSE TO COUNTER-SUMF
1.	The Plaza East Supermarket has leased the premises where its store is located from United Corporation since 1986. See Exhibit 1 .	Undisputed.
2.	The Plaza East Supermarket burned down in 1992. See Exhibit 1 .	Undisputed.
3.	The building loss was insured against fire by an insurance policy obtained by the Plaza Extra Partnership, paying all premiums on the policy. See Exhibit 1 .	United objects to this statement of fact on the grounds that it is immaterial to any issues raised United’s Motion for Partial Summary Judgment re: Claim Y-8, or Hamed’s cross-motion. Consistent with many commercial leases, the partnership was obligated to, and did pay the premiums on the hazard insurance policy of insurance. See Exhibit 4, April 2, 2014 Deposition of Fathi Yusuf, pp. 53-54. That hardly changes the fact that, as Judge Brady found in a prior ruling in this case, the land and the improvements that make up the United Shopping Center are owned in fee simple by United, not the partnership. See Judge Brady’s April 27, 2015 Opinion and Order Granting Motion for Summary Judgment re: Rent, p. 12.
4.	The proceeds from the fire insurance policy were used to rebuild the building leased by the Plaza Extra Partnership. See Exhibit 1 .	United objects to this statement of fact on the grounds that it is immaterial to any of the issues raised by United’s Motion for Partial Summary Judgment re: Claim Y-8, or to Hamed’s cross-motion. See response to Hamed’s SUMF No. 1, above. Subject to that objection, undisputed.

¹¹All citations to exhibits in United’s Response are citations to numbered exhibits attached to this Reply.

	HAMED’S COUNTER-SUMF	UNITED’S RESPONSE TO COUNTER-SUMF
5.	When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, two new cisterns were constructed for the new store. See Exhibit 1 .	Undisputed.
6.	When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, there was an expanded new roof over the leased premises that collected the rain water that went into the two new cisterns. See Exhibit 1 .	Undisputed that the roof area over the store was greater after the rebuild than before.
7.	When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, a pipestand for distributing water from these cisterns was built as well, as depicted in this photograph (See Exhibit 1):	Undisputed with two qualifications: first, the correct terminology is “standpipe,” not “pipestand.” Second, the standpipe drew water to pump into trucks not from the new cisterns, but instead from a pre-existing cistern located under the store. See Exhibit 3, 111-114 (testimony of Mike Yusuf).
8.	All water trucks reached the pipestand by using the same driveway used by the trailers delivering inventory to the Plaza Extra East loading dock. See Exhibit 1	Undisputed.

Plaza Extra Supermarket Store Warehouse

Water Pipe



	HAMED'S COUNTER-SUMF	YUSUF'S RESPONSE TO COUNTER-SUMF
9.	By 2004, a switch has been installed inside the receiving door of the Plaza Extra Supermarket warehouse that had to be turned on before water could be distributed to a water truck. See Exhibit 1 .	Undisputed.
10.	Employees of the Plaza East Partnership operated this switch for the pipestand, allowing water to be loaded from this pipestand into these water delivery trucks. See Exhibit 1 .	Disputed, because sometimes the truck drivers themselves operated the switch and sometimes they asked a Plaza Extra employee to do so. See Exhibit 8, Declaration of Mike Yusuf, ¶ 2.
11.	Employees of the Plaza East Partnership maintained the pipestand. See Exhibit 1 .	Disputed, as the standpipe itself required no maintenance. See Exhibit 8, ¶ 3.

	HAMED’S COUNTER-SUMF	YUSUF’S RESPONSE TO COUNTER-SUMF
12.	The Plaza East Partnership paid all expenses associated with the maintenance of the pipestand. See Exhibit 1 .	Disputed, as the standpipe itself required no maintenance. <i>See</i> Exhibit 8, ¶ 3.
13.	The Plaza East Partnership paid the utility bills to run the pumps. See Exhibit 1 .	Undisputed.
14.	Employees of the Plaza East Partnership repaired the pipestand (such as replacing pumps). See Exhibit 1 .	Dispute that there were any repairs to the standpipe. <i>See</i> Exhibit 8, ¶ 3. Do not dispute that a pump used to pump water from the cistern to the standpipe may have had to be replaced during the relevant period.
15.	The Plaza East Partnership paid all expenses associated with the needed repairs. See Exhibit 1 .	United objects to this SUMF on the grounds of vagueness because it does not specify what equipment or improvement to United’s real estate it is referring to.
16.	Employees of the Plaza East Partnership repaired the two new cisterns when needed. See Exhibit 1 .	United objects to this statement of act because it is not material to any issues raised by United’s Motion for Partial Summary Judgment re: Claim Y-8.
17.	Employees of the Plaza East Partnership collected the payments made by the water trucks, some of which were collected at the warehouse and some of which were collected by the cashiers in the store. See Exhibit 1 .	Undisputed.
18.	Accounting employees of the Plaza East Partnership handled any funds collected by the warehouse personnel or cashiers from the water sales, as they would do for all store receipts on any given day. See Exhibit 1 .	Undisputed.
19.	Accounting employees of the Plaza East Partnership deposited the funds received from the water sales into the Plaza East Partnership Supermarket account, as was done with all receipts. See Exhibit 1 .	Undisputed.
20.	The salaried store managers of the Plaza East Partnership (Mike Yusuf, Mafi Hamed and Yusuf Yusuf) oversaw the entire operation of the pipestand and water sales, including the handling of all funds and all deposits made into the Plaza East Partnership accounts. See Exhibit 1 . The Yusuf sons testified that they	Disputed, because the characterization of Yusuf Yusuf’s quoted testimony is inaccurate. Yusuf Yusuf testified that Plaza Extra was paying him, but he did not testify that he was working for a “partnership,” and he did not mention the word “partnership” in his testimony. At no time

	HAMED’S COUNTER-SUMF	YUSUF’S RESPONSE TO COUNTER-SUMF
	<p>completely understood that when they were working on this “water,” they were doing so as employees of the Partnership, not United as a separate entity. <i>See, e.g., Exhibit 3</i>, Deposition of Yusuf Yusuf at 148-149.</p> <p>Q. But sometimes you did work on the water stuff, generally?</p> <p>A. Well, if you want to say "work on." Pump goes down, yes, I catered to it.</p> <p>Q. Okay. And -- and when you did that, whenever you were doing that, who was paying you?</p> <p>A. Plaza Extra was paying me.</p> <p>Q. The supermarket?</p> <p>A. I was an employee, yeah.</p>	<p>did the partnership ever pay any employees. Rather, United was the entity with employees, with an EIN number, who would send W-2’s, etc.</p>
21.	<p>As part of the normal operations of the Plaza Extra Supermarket, all revenues from the water sales would be co-mingled with the daily proceeds from the store sales. <i>See Exhibit 1.</i></p>	<p>Undisputed to the extent that Hamed is saying that revenues from water sales were placed into safes or deposited into accounts that also contained revenues from store sales. United could have opened a separate bank account for the deposit of water revenues only, but it was far more efficient to leave the revenues in supermarket accounts and simply make the necessary adjustments to Hamed’s and Yusuf’s shares of store proceeds to reflect that water revenues belonged to United and were not to be shared with Hamed.</p>
22.	<p>Each month from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the gross receipts on the total monthly sales of the Plaza East Supermarket, which would include the co-mingled funds from the water sales. <i>See Exhibit 1.</i></p>	<p>Undisputed.</p>
23.	<p>Each year from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the income taxes each year</p>	<p>Undisputed.</p>

	HAMED’S COUNTER-SUMF	YUSUF’S RESPONSE TO COUNTER-SUMF
	on the total annual income of the Plaza East Partnership, which would include the profit, if any, made from the water sales. See Exhibit 1 .	
24.	Between 2004 and 2012, no profits were distributed due to the FBI raid. Thereafter, the Partnership disbursed millions of dollars in accrued profits on a 50/50 basis equally to Hamed and Yusuf, which would have included whatever co-mingled profits, if any, that may have been made on the water sales (after operating expenses, overhead and taxes). See Exhibit 1 .	Undisputed.
25.	United never sought recovery for any water revenues until 2015, after the Partnership was dissolved and Yusuf had been appointed the Liquidating Partner by Judge Brady. See Exhibit 1 .	Disputed, because United’s counterclaim, which was filed on December 23, 2014, included counts sounding in restitution, unjust enrichment and conversion, and that pleading is properly treated as a request for, <i>inter alia</i> , recovery of water revenues.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, as well as those articulated in its Motion for Partial Summary Judgment re: Claim Y-8, United respectfully requests that the Master grant its motion for partial summary judgment on its unjust enrichment and conversion claims (and deny Hamed’s cross-motion), and rule that United has established liability under both theories, with damages to be determined at a short trial or evidentiary hearing to be scheduled later. In the alternative, the Master should at the very least rule that there are genuine issues of material fact precluding partial summary judgment on Claim Y-8, and that all open issues regarding both claims will be resolved by the Master at a trial or evidentiary hearing.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: July 7, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2020, I caused the foregoing **United's Reply in Support of its Motion for Partial Summary Judgment Re: Claims Y-8 – Water Revenues**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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/s/Charlotte K. Perrell

EXHIBIT 1

on September 22, 2016, defendant/counterclaimant Fathi Yusuf (“Yusuf”) respectfully submits his Accounting Claims and Proposed Distribution Plan (the “Claim”) as follows:

I. Current Status of Partnership Wind Up and Overview of Proposed Distribution

The current status of the wind up of the Partnership is set forth in the Tenth Bi-Monthly Report of the Liquidating Partner filed on September 30, 2016 and the supporting financial information concurrently submitted to the Master and counsel. At present, the total remaining assets of the Partnership are \$8,957,168.54³.

A summary of the Claim’s proposed distributions is set forth in **Exhibit A**. It contemplates that a portion of the remaining Partnership Assets will be held in reserve for potential expenses including taxes and litigation costs for personal injury claims made or potentially to be made against the various Plaza Extra Stores prior to the dissolution. In addition, all Debts of the Partnership must be paid prior to any distributions to Partners. At this stage, the remaining Debts include the unpaid rent obligations, plus interest, due to United for occupying the Plaza Extra-East store and Bays 5 and 8 in the United Shopping Plaza, which have not been adjudicated⁴, as well as other obligations owed to United discussed in more detail below. As reflected in Exhibit A, there will be a shortfall of approximately \$4 million in Partnership Assets, if all listed Debts are paid and all proposed reserves are established. Any actual shortfall must be made up by the Partners or a deceased Partner’s estate.

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³ These total assets are reflected in the Partnership balance sheet provided, along with income statement, on September 30, 2016 to the Master and counsel for the Partners by John Gaffney (“Gaffney”), who has served as the accountant for the Partnership.

⁴ See Memorandum Opinion and Order dated April 27, 2015 (the “Rent Order”), which provides that although back rent for Bays 5 and 8 are set forth in United’s Counterclaim, “this Order addresses only Bay No. 1.” (Rent Order, p. 2, n. 1)

These reserves include the claims of Wadda Charriez⁸ since her counterclaims are effectively against the Partnership and, therefore, constitute a potential obligation of the Partnership.

III. Outstanding Debts of the Partnership

Although nearly all of the undisputed Debts of the Partnership have been paid or resolved, the following Debts remain:

A. Miscellaneous Debts

There are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners⁹. This amount relates primarily to accounts payable for open tax issues from 2013.

B. Unpaid Rent for Plaza Extra-East and Adjacent Bays

While the Court determined that certain past due rent obligations for Plaza Extra-East must be paid pursuant to the Rent Order, there remain additional rent claims for Plaza Extra-East. These claims have not yet been resolved¹⁰ and, if found to be due and owing, then these are Debts of the Partnership that should be paid prior to any distribution of the remaining Partnership Assets to the Partners.

United makes the following claims against the Partnership as set forth in its Amended Counterclaim and Motion For Partial Summary Judgment Regarding Rent:

⁸ These claims are the subject of a separate suit, United Corporation v. Wadda Charriez, SX-13-CV-152, which Yusuf has moved to consolidate into this action for resolution. *See* Motion to Consolidate filed on March 17, 2016.

⁹ The total liabilities are reflected in the Partnership balance sheet provided to the Master and counsel for the Partners by Gaffney on September 30, 2016.

¹⁰ *See* Rent Order, p. 2, n. 1; p. 11, n. 4.

1. Bay 1 – Increased Rent Due Net of Rent Paid

United provided formal notice of increased rent of \$200,000 per month to the Partnership, which was to begin on January 1, 2012 through March 31, 2012, if the premises were not vacated before then. Thereafter, beginning on April 1, 2012 through March 8, 2015, United provided formal notice of increased rent of \$250,000 per month. *See* Exhibit D to Yusuf's Declaration dated August 12, 2014 (the "Yusuf Declaration") in support of Defendants' Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is \$6,974,063.10. *See* calculation of additional rents attached as **Exhibit C**.

2. Bays 5 and 8

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is \$793,984.34. *See* the Yusuf Declaration at ¶¶ 21-25.

3. Interest on Rent Claims

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order (\$6,248,924.14) is \$881,955.08 as of May 11, 2015, when that rent was paid to United. *See* calculation of interest on Bay 1 rent attached as **Exhibit D**.¹¹

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30,

¹¹ This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

2016 is \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid. *See* calculation of interest on Bays 5 and 8 rent attached as **Exhibit E**.

C. Reimbursement For Gross Receipts Taxes Paid by United

As Yusuf has testified without contradiction (*see* transcript of Yusuf's deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United's Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling \$60,586.96, which were never reimbursed. *See* **Exhibit F**, Summary and Evidence of United Payment of Gross Receipts Taxes.

D. Black Book Balance Owed to United

A black ledger book (the "Black Book") was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership. *See* **Exhibit G**, Relevant Black Book Entries.

E. Additional Ledger Balances Due to United

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership. *See* **Exhibit H**, Ledger Sheets

Reflecting United's Payments for Plaza Extra. In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995 and 1996. The amounts relating to Yusuf's personal expenses are included in the BDO Report discussed below in § IV, accounting for the withdrawals as between the Partners and their families. However, the total amount of \$199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

F. Water Revenue Re Plaza Extra-East

Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015.

G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United \$188,132 for its unreimbursed transfers. *See Exhibit I*, Summary and Supporting Documentation of Unreimbursed Transfers from United.

EXHIBIT 2

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

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

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

MEMORANDUM OPINION AND ORDER

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

FACTUAL BACKGROUND

In its instant Motion, United seeks allegedly past due rents for Bay No. 1 of United Shopping Plaza, defined therein as “69,680 Sq. Ft. Retail Space...,” “utilized for the day to day operations of Plaza Extra East Store located at 4C and 4D Estate Sion Farm, St. Croix, Virgin Islands.” Motion, 1-2.¹ Since 1986 this retail space has been leased by United to the Hamed-Yusuf Partnership (“Partnership”). According to United, and supported by the Affidavit of Defendant Yusuf, the Partnership has paid rent to United for leasing that space while operating Plaza Extra - East. Between 1986 and 1993, the parties settled rents following a request made by United. Motion, 3. Additionally, between 2004 and 2011, after United requested a rent payment for those years, the Partnership authorized payment to United for \$5,408,806. Motion, 7 (Yusuf Affidavit, ¶7 and Exhibit B).

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

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

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

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

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

Plaintiff, in his Response, argues that Yusuf cites no procedural basis that would allow United, in its capacity as landlord, to withdraw rents from the Partnership’s accounts. Response, 1. Plaintiff further argues that United has issued rent notices for \$250,000.00 per month as opposed to the \$58,791.38 per month stated in Yusuf’s affidavit for rent allegedly due from January, 2012. Response, 4. Without disputing that some rent is due, Plaintiff disputes United’s calculations, pointing to discrepancies in the store’s square footage² and implying that the rent for Plaza Extra - Tutu and Plaza Extra - East should be identical. Response, 4-5.

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On the basis of the foregoing, it is hereby

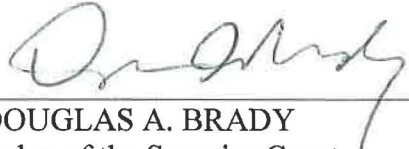
ORDERED that Defendant United Corporation’s Motion to Withdraw Rent is GRANTED, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay

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

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

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

Dated: April 27, 2015



DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor
4/27/15

CERTIFIED TO BE A TRUE COPY
This 27th day of April 2015

CLERK OF THE COURT
By  Court Clerk 15

EXHIBIT 3

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

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

vs.)

Case No. SX-2012-CV-370

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

vs.)

**DEPOSITIONS TAKEN
JANUARY 22, 2020**

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

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

vs.)

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

UNITED CORPORATION, Defendant.)

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

vs.)

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

FATHI YUSUF, Defendant.)

FATHI YUSUF, Plaintiff,)

vs.)

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

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

KAC357 Inc., Plaintiff,)

vs.)

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

HAMED/YUSUF PARTNERSHIP,)

Defendant.)

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

was taken on the 22nd day of January, 2020, at the Law
Offices of DNF, 1131 King Street, Suite 204, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
10:15 a.m. and 3:57 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

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

FATHI YUSUF -- DIRECT

1 **A.** One year, I think 52, between the 50 and 60.

2 That money was going to the -- to his
3 family -- not really his immediate family or my immediate
4 family. I don't have no immediate family back home, but a
5 60,000 people village is consisting of 16 -- 13 family. And
6 he's part of one of the families and I'm part from a
7 different family, and each -- each, you know, each family
8 may be 4-5,000 to 8,000. Is small and big. And we said,
9 Let's give them some money. Things is bad.

10 **Q.** So when you say give the families money, was that
11 a charitable, like a -- like a gift? A charitable donation?

12 **A.** Yes, to buy food.

13 **Q.** Okay. All right. And both of the families did
14 that with those funds?

15 **A.** Yes.

16 **Q.** Okay. All right. And who was primarily in charge
17 of coordinating, and all of these funds for the water
18 revenues, from 1994 through the raid, or up to the raid in
19 2001?

20 **A.** Wally is the man in charge of Plaza Extra East.

21 **Q.** Okay.

22 **A.** I have one or two son maybe was working there.

23 **Q.** Um-hum.

24 **A.** But it was under the supervision of Wally.

25 **Q.** Okay. And do you know what the systems were to

FATHI YUSUF -- DIRECT

1 St. Thomas; base rent, percentage rent, insurance. Maybe
2 not -- maybe the insurance, no, because that's the insurance
3 always. It -- everything go individual. Maintenance and
4 consumption of water.

5 He says, Are you going to charge me water? I
6 says, Yes. The agreement, whatever costs us in -- in
7 St. Thomas, we want to apply it to St. Croix to be fair.
8 Then he didn't even answer me back. And I bill him. I
9 think he have the record up to now. Water was included.
10 It's not -- it's a -- it's a matching, but water was costing
11 us about \$40,000 annually in the St. Thomas store. So most
12 likely, he bid \$40,000 for water annually for Plaza Extra
13 East.

14 **Q.** So let me just stop you right here.

15 So what you're saying is when you tagged the
16 rent that was to be paid by Plaza Extra East from 2004
17 through, I think you guys did a 10-year -- another
18 10-year --

19 **A.** No.

20 **Q.** Okay.

21 **A.** 1994 to 2004 --

22 **Q.** I know, but I'm talking --

23 **A.** -- is my commitment.

24 **Q.** I understand, but at 2004, the deal changed?

25 **A.** Right.

FATHI YUSUF -- DIRECT

1 **Q.** Right, that's what I'm talking about.

2 **A.** Exactly.

3 **Q.** So in 2004 when the deal changed and you -- you
4 connected or linked --

5 **A.** Yes.

6 **Q.** -- the rent for Plaza Extra East to, in essence,
7 what was happening in St. Thomas just to provide a base or a
8 means to calculate it, right?

9 **A.** The calculation is we have bill from Tutu Park
10 Mall.

11 **Q.** I understand.

12 What I'm saying is when that happened, when
13 it went from the prior arrangement to the new arrangement.

14 **A.** As of the first day after 2004 commitment.

15 **Q.** I understand.

16 So from that point, what I'm asking you is,
17 is water was being charged to the partnership for
18 consumption --

19 **A.** Yes.

20 **Q.** -- based the consumption that was used at --

21 **A.** In St. Thomas.

22 **Q.** -- in St. Thomas?

23 **A.** Yes.

24 **Q.** Okay. So your -- Wally was aware that water was
25 no longer free, in essence, to Plaza Extra East?

FATHI YUSUF -- DIRECT

1 **A.** Yes, he knew.

2 **Q.** Because of this rent?

3 **A.** The bill can prove it. It's evidence.

4 **Q.** Okay. Now, that's the charge for consumption and
5 it's just a number that ties to what was done in St. Thomas,
6 right?

7 **A.** Right.

8 **Q.** It's not the actual consumption, because it was
9 just a way --

10 **A.** It's way it's matching --

11 **Q.** Right.

12 **A.** -- St. Thomas bill.

13 **Q.** Right. But it put Wally on notice that water is
14 no longer free?

15 **A.** He knows that. Whatever penny.

16 **Q.** Okay.

17 **A.** Whatever it costing me, you know.

18 **Q.** I understand.

19 **A.** Look in the dictionary, say what is the -- what is
20 the whatsoever. Whatever it cost in expenses to operate --

21 **Q.** Right.

22 **A.** -- in St. Thomas, he -- the St. Thomas --
23 St. Croix store obligated to match --

24 **Q.** Right.

25 **A.** -- for that location, without looking at the size.

FATHI YUSUF -- DIRECT

1 **Q.** Okay. So that -- that deals with the expense of
2 the water consumption.

3 **A.** Yes.

4 **Q.** Now, my question for you is --

5 **A.** Yes.

6 **Q.** -- I'm trying to get to the next part.

7 **A.** Sure.

8 **Q.** The next part is, how was there -- what was the
9 discussion, or was there a discussion, or what was the
10 arrangement for the water revenue, not the consumption,
11 which I understand you put them on notice, there's no --
12 it's not free anymore.

13 **A.** Yes.

14 **Q.** What was the arrangement for the revenue for the
15 water sales after 2004?

16 **A.** The -- the -- I didn't understand what you mean.

17 **Q.** So after 2000 --

18 **A.** You mean the revenue outside?

19 **Q.** The revenue that was coming from the sale of
20 water, what was the arrangement with Wally --

21 **A.** Um-hum.

22 **Q.** -- for how that would be -- how that would go?
23 How it would go to United? How -- how would you deal with
24 the revenue?

25 **A.** Naturally, it have to go to United.

FATHI YUSUF -- DIRECT

1 **Q.** Okay. Did you discuss -- tell me how that
2 conversation went.

3 **A.** No, we did not discuss. I thought everything he
4 write it down.

5 **Q.** Okay.

6 **A.** And when we sit down and do our balance, he knew
7 that money get into Plaza and is not Plaza money, it's my
8 own money.

9 **Q.** Okay.

10 (Whereupon Attorney Holt enters room.)

11 Did you discuss with him how that money was
12 going to be put into the United accounts?

13 **A.** No, I did not discussed it, --

14 **Q.** Okay.

15 **A.** -- honestly.

16 **Q.** And at the time that these conversations were
17 happening, was it during the period that the FBI was
18 monitoring you, because this was in 2003 and '4?

19 **A.** Yeah, yeah.

20 **Q.** All right.

21 **A.** Well, we couldn't make any changes --

22 **Q.** Okay.

23 **A.** -- because of the FBI.

24 **Q.** Okay. All right.

25 **A.** But we have -- we have a -- a running balance,

WALEED "WALLY" HAMED -- DIRECT

1 split between the two families to be able to give, in
2 essence, to charity or to -- as gifts to other family
3 members?

4 **A.** No, there was no agreement for that period.

5 **Q.** Okay. Was there an agreement to do that at all?
6 To give the revenues to family members? Half to -- or to
7 provide charitable donations to half of the family and the
8 other half of the family?

9 **A.** There was an agreement to go ahead and give the
10 proceeds or the funds to charitable organiz -- no, family.

11 **Q.** Okay. But the idea was it was gifts?

12 **A.** Yes.

13 **Q.** Okay. Not loans? Not investments? Gifts.

14 Do you need some water?

15 **A.** I have some, thanks.

16 **Q.** So were you present during the conversations
17 between Mr. Yusuf and Mohammad Hamed when the decisions were
18 made to begin to sell water after the fire?

19 **A.** I might have been, yes.

20 **Q.** Okay. Do you recall having -- being present for
21 any of those conversations?

22 **A.** I don't recall. It's been such a long time, but I
23 know I was there. I was around, yes.

24 **Q.** Okay. Do you -- okay. Well, you either recall or
25 you don't.

MAHER "MIKE" YUSUF -- DIRECT

1 fire?

2 **A.** Yes.

3 **Q.** Okay. So that was in place before the fire?

4 **A.** Right.

5 **Q.** Okay. So where is the cistern that was built
6 after the fire?

7 **A.** Write it down?

8 **Q.** Yeah.

9 **MR. HARTMANN:** Do it as D.

10 **A.** There's two cisterns, by the way.

11 **Q.** (Ms. Perrell) Okay.

12 **A.** Not one.

13 **Q.** Okay. Put D-1 and D-2 or something.

14 **MR. HARTMANN:** Yeah.

15 **A.** (Witness complies.)

16 **Q.** (Ms. Perrell) Okay. Where did the trucks pull up
17 to fill up for the water?

18 **A.** I'm going to give you the pipe stand here, okay?

19 **Q.** Okay.

20 **A.** Kind of. Okay.

21 **MR. HARTMANN:** That's good.

22 **Q.** (Ms. Perrell) Okay. So when the water trucks
23 would pull up to fill up, let's say in 1994. Let's just
24 keep it easy. 1994, you opened, and the water -- first
25 water truck pulls up and you're going to sell him some

MAHER "MIKE" YUSUF -- DIRECT

1 Q. Okay.

2 A. -- about, you know, whatever proceeds, the water,
3 and they'd give it to charity.

4 Q. Okay.

5 A. And what the details were, I was just doing what I
6 was told to do.

7 Q. Okay. All right. So other than that, you don't
8 have any other information about it?

9 A. No.

10 Q. Okay. All right.

11 A. But I want to mention something.

12 When I heard Wally's deposition, he was
13 saying about Plaza employees was maintaining and --

14 Q. Right.

15 A. -- taking care of all this --

16 Q. The cisterns?

17 A. -- the cistern and this and that, there was
18 nothing to take care of.

19 Q. Okay.

20 A. The well pumps in the thing and it pumps out.

21 Q. Okay. And you were the one that was involved with
22 the coordinating for the installation of the -- the
23 standpipe or --

24 A. Yes.

25 Q. -- or whatever; is that correct?

MAHER "MIKE" YUSUF -- CROSS

1 **A.** Yes.

2 **MS. PERRELL:** All right. I have no further
3 questions.

4 **CROSS-EXAMINATION**

5 **BY MR. HARTMANN:**

6 **Q.** On the maintenance, didn't you have -- say earlier
7 in your deposition that you had to go down there and do
8 stuff a lot, working with the cistern and the stuff?

9 **A.** Yeah, yeah.

10 **Q.** Weren't you an employee of the partnership?

11 **A.** Yeah, of United Corporation.

12 **Q.** But you were being paid out of the grocery store?

13 **A.** Yeah.

14 **Q.** Okay. Turning back to this. I'm confused now.

15 Yesterday on Exhibit 4, yesterday, I had you
16 draw what has turned out to be the most important exhibit,
17 I'd like to point out. And you said that -- I asked you to
18 draw a box around what is the supermarket.

19 **A.** Right.

20 **Q.** And you've put a cistern. You said that the main
21 cistern that's being used here is the H cistern; is that
22 right? The one you put the H by?

23 **A.** For the standpipe for the truckers?

24 **Q.** Yeah, for the truckers.

25 **A.** Yes.

MAHER "MIKE" YUSUF -- CROSS

1 **Q.** But, excuse me, but that seems to be inside of A?

2 **A.** Correct. Yeah, correct.

3 **Q.** So there's a big cistern standing up on the floor
4 somewhere inside of A?

5 **A.** Do you know what's a cistern?

6 **Q.** Yeah, I got a general idea. I know that these
7 outside are standing up, right?

8 **A.** No.

9 **Q.** Oh, they're buried?

10 **A.** Yeah.

11 **Q.** Oh, okay.

12 So all of this stuff is buried?

13 **A.** Yeah.

14 **Q.** Okay. So this is actually buried underneath the
15 store?

16 **A.** Yes.

17 **Q.** Okay. And that's the store that the partnership
18 leases?

19 **A.** Yes.

20 **Q.** Okay. So all of the water that was being given to
21 the truckers came from basically a cistern that was located
22 inside the store?

23 **A.** Right.

24 **Q.** Okay. And --

25 **MS. PERRELL:** I would object.

MAHER "MIKE" YUSUF -- CROSS

1 **MR. HARTMANN:** Okay.

2 **MS. PERRELL:** Not inside the store.

3 **A.** Sorry, yeah. Not inside the store.

4 **Q.** (Mr. Hartmann) Let me add, sir. I'll do it.

5 And -- and some of that water was coming from
6 here?

7 **MS. JAPINGA:** Say where you're saying.

8 **Q.** (Mr. Hartmann) From F; is that correct?

9 **A.** Yes.

10 **Q.** Okay. But it was being stored in cisterns in A?

11 **A.** In A. I --

12 **Q.** Okay.

13 **A.** Some of that cistern, if I'm not mistaken, was
14 under -- under one of the tenants. There was a small bay
15 on -- on --

16 **Q.** Okay. And you said that sometimes water from D-2
17 was used in the standpipe as well, right?

18 **A.** No.

19 **Q.** It was never used?

20 **A.** We always had problems, and that was D-1.

21 **Q.** D-1 was the overflow?

22 **A.** D-1 was the back cistern, --

23 **Q.** Okay.

24 **A.** -- which used to overflow from D-2.

25 **Q.** So one of them you did sometimes use to supply the

MAHER "MIKE" YUSUF -- CROSS

1 standpipe. You know that because you had problems with it?

2 **A.** We always had problems with it.

3 **Q.** Okay.

4 **A.** Always had problems. We never could get it
5 working.

6 **Q.** But sometimes it worked and sometimes it didn't?

7 **A.** It was just there.

8 **Q.** Okay. So where did all the water in D-1 and D-2
9 go?

10 **A.** To the store.

11 **Q.** To the store. Okay.

12 So this one that's located underneath the
13 store, the H cistern, you said you installed the pumping
14 cistern?

15 **A.** I coordinate the pumping.

16 **Q.** Okay.

17 **A.** To install it. I -- I, maybe, physically did it
18 with the plumber or I was the one who did the --

19 **Q.** So to -- to look at this cistern, I would go into
20 the store and I'd go behind the pharmacy and I'd open a
21 hatch; is that right?

22 **A.** No, it's not a hatch. It's concrete.

23 **Q.** It's what?

24 **A.** It's a concrete -- a concrete hatch.

25 **Q.** Okay. A thing? It's a --

MAFEED "MAFI" HAMED -- DIRECT

1 **A.** Yes.

2 **Q.** Okay. And you know that for the same reason that
3 you believe that's just something common knowledge when you
4 came back --

5 **A.** Yes.

6 **Q.** -- to visit?

7 **A.** Yes.

8 **Q.** Okay. All right. With regard to providing any of
9 the monies that was part of the water revenues to any of the
10 family members, were you involved with distributing any of
11 the monies to either your father or to Mr. Yusuf?

12 **A.** No.

13 **Q.** Okay. Did you have any conversations with -- do
14 you know as to whether any of the water revenue was
15 distributed to Mr. -- your father, Mohammad Hamed, and
16 Mr. Yusuf?

17 **A.** No, I don't know.

18 **Q.** You don't know? Okay.

19 Did you have any discussions with your father
20 about the water revenue and how that was supposed to be
21 handled, and for how long?

22 **A.** We had discussions, yes.

23 **Q.** Okay. And what were those discussions?

24 **A.** The discussions were, the revenues generated from
25 the water sales was going to go as to the family members, or

MAFEED "MAFI" HAMED -- DIRECT

1 the -- or to the unfortunate family members that are abroad.

2 Q. Okay.

3 A. And there was no time limit, as he's saying.

4 Q. Okay. And that was because -- you know this
5 because of the conversations you had with your father?

6 A. This is direct knowledge from my father, yes.

7 Q. Okay.

8 A. Because my father talks to us.

9 Q. Okay.

10 A. We have conversations. He lets us know what's --
11 what's the right way to do things and what's the proper way.

12 Q. All right.

13 A. And what's owed and what's -- what's owed to us.

14 Q. Okay. And your father was gone and no longer on
15 St. Croix after 1996; isn't that right?

16 A. My father was going back and forth. I think in
17 1996, that's when he went and did the pilgrimage in Mecca
18 with my mother, --

19 Q. Okay.

20 A. -- yes.

21 Q. I mean, it's been a fact -- so 1996, though, he
22 was no longer at the store on a daily basis?

23 A. Right.

24 Q. A hundred percent?

25 A. Yes.

EXHIBIT 4



The Oral Deposition of Fathi Yusuf

Mohammad Hamed v. Fathi Yusuf, et al

April 2, 2014

Cheryl L. Haase, RPR

Caribbean Scribes, Inc.

Phone: (340)773-8161

Fax: (340)773-6126

Email: cheryl@caribbeanscribes.com

Internet: www.caribbeanscribes.com

1 A. Yes.

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

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

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

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

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

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

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

25 A. Yes.

1 for our shopping center manager, within the supermarket.
2 It's on the second floor. And by the way, I'm not charging
3 for the second floor.

4 Q. Okay. And then you also said that one of the
5 conditions was that you would have the final word, but that
6 you --

7 A. Excuse me.

8 Q. You said that one of the conditions was that you
9 would have the final word, --

10 A. Oh, yes.

11 Q. -- but that you did have an obligation to consult
12 with him?

13 A. An absolute obligation, yes.

14 Q. Okay. All right.

15 Now, I want to go back to this -- to this
16 deposition, because this ties a little bit into it.

17 A. Yeah, okay.

18 Q. Okay. It says, I see Mr. Idheileh come knock on
19 my door, come on in, shake hand, I offer him coffee. I -- I
20 don't remember whether he took it or not.

21 MR. HODGES: Pardon me. What page are you
22 reading from?

23 THE WITNESS: This is --

24 MR. HOLT: Page 21, the top, about halfway
25 down, which says, I see Mr. Idheileh come knock on my door.

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

4 A. No, including the insurance.

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

7 A. Yes.

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

11 A. Yes.

12 Q. Okay.

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

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

19 A. It's a tradeoff, yes.

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

22 A. Yes. Yes, sir.

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

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

1 A. Who?

2 Q. (Mr. Holt) Mr. Idheileh? How do you pronounce
3 his name?

4 A. Yeah, yeah, Ahmed Idheileh, yes.

5 Q. Okay. I see Mr. Idheileh come knock on my door.
6 Come in, --

7 A. Uh-huh.

8 Q. -- shake hand. I offer him coffee. I don't
9 remember whether he took it or not.

10 A. Uh-huh.

11 Q. I say, I tell him, What can I do for you? How
12 come you're back? I understand that you sold Sea-Mart not
13 to come back to the Virgin Islands. Your intention was to
14 sell Sea-Mart and go home. I can see you here now.

15 He say, Yes, things is tough back home, and I
16 decided to come back. I say, Well, what are you planning to
17 do? It's a friendly discussion. He say, I would like to be
18 your partner in St. Thomas, too. I says, You know, I don't
19 have the final word. I will check with my partner,
20 Mr. Hamed.

21 Is that correct?

22 A. That's exactly what I tell you.

23 Q. Okay.

24 A. I normally consult with them. This is an
25 important step.

EXHIBIT 5

United Corporation dba Plaza Extra

Tutu Park Store Sales:

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

Tutu Park Store:

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

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

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

Tutu Park Store Sales:

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

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

Sion Farm Sales:

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

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

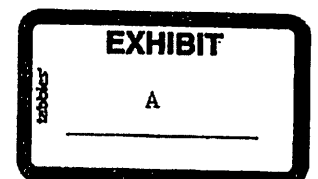


EXHIBIT 6

**z 2012 United Corp Plaza STT
General Ledger**

For the Period From Jan 1, 2006 to Dec 31, 2011

Filter Criteria includes: 1) IDs: 626000-20. Report order is by ID. Report is printed with shortened descriptions and with Hide Period Subtotals on Multi-Period Report and in Detail Format.

Account ID Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
626000-20 Water	1/1/06			Beginning Balance			
	3/31/06			Total of purged tra	7,047.87		
	4/30/06			Total of purged tra	2,323.90		
	5/31/06			Total of purged tra	3,758.55	2,323.90	
	6/30/06			Total of purged tra	1,821.93		
	7/31/06			Total of purged tra	2,253.57		
	8/31/06			Total of purged tra	2,092.56		
	10/31/06			Total of purged tra	4,840.80		
	11/30/06			Total of purged tra	2,137.43		
				Change	26,276.61	2,323.90	23,952.71
	12/31/06			Fiscal Year End Ba			23,952.71
	1/1/07			Beginning Balance			
	1/31/07			Total of purged tra	4,376.17		
	2/28/07			Total of purged tra	1,536.81		
	3/31/07			Total of purged tra	2,186.21		
	4/30/07			Total of purged tra	2,127.34		
	5/31/07			Total of purged tra	4,633.64	2,127.34	
	6/30/07			Total of purged tra	2,447.55		
	7/31/07			Total of purged tra	1,750.23		
	8/31/07			Total of purged tra	1,663.94		
	9/30/07			Total of purged tra	2,272.77		
	10/31/07			Total of purged tra	1,525.84		
	11/30/07			Total of purged tra	2,174.74		
	12/31/07			Total of purged tra	3,635.60	2,174.74	26,028.76
				Change	30,330.84	4,302.08	26,028.76
	12/31/07			Fiscal Year End Ba			26,028.76
	1/1/08			Beginning Balance			
	1/31/08			Total of purged tra	3,804.77	1,460.86	
	2/29/08			Total of purged tra	2,618.29		
	3/31/08			Total of purged tra	865.29		
	4/30/08			Total of purged tra	2,152.82		
	5/31/08			Total of purged tra	3,533.27	2,152.82	
	6/30/08			Total of purged tra	2,216.29		
	7/31/08			Total of purged tra	4,017.45	2,216.29	
	8/31/08			Total of purged tra	2,053.90		
	9/30/08			Total of purged tra	2,114.23		
	10/31/08			Total of purged tra	4,109.40	2,114.23	
	11/30/08			Total of purged tra	4,097.54	1,995.17	
	12/31/08	AJE #33	GEN	Accounts Payable	1,714.39		
	12/31/08			Total of purged tra	2,102.37	2,102.37	
				Change	35,400.01	12,041.74	23,358.27
	12/31/08			Fiscal Year End Ba			23,358.27
	1/1/09			Beginning Balance			
	1/1/09	AJE #33	GEN	Accounts Payable		1,714.39	
	1/31/09	AJE #8	GEN	STT Cash Disburs	1,714.39		
	1/31/09	AJE #22	GEN	Accounts Payable	2,584.54		
	2/1/09	AJE #22	GEN	Accounts Payable		2,584.54	
	2/28/09	AJE #8	GEN	STT Cash Disburs	2,584.54		
	3/31/09	AJE #8	GEN	STT Cash Disburs	3,943.70		
	4/30/09	AJE #8	GEN	STT Cash Disburs	2,867.80		
	5/31/09	AJE 8	GEN	AJE 8	2,123.37		
	7/31/09	AJE 7	GEN		5,147.81		
	8/31/09	AJE 7	GEN		3,266.97		
	9/30/09	AJE7	GEN		3,150.74		
	10/31/09	AJE 7	GEN		2,132.80		
	11/30/09	AJE 18	GEN		4,162.00		
	12/31/09	AJE 7	GEN		7,557.80		
	12/31/09	AJE 18	GEN			4,162.00	

**z 2012 United Corp Plaza STT
General Ledger**

For the Period From Jan 1, 2006 to Dec 31, 2011

Filter Criteria includes: 1) IDs: 626000-20. Report order is by ID. Report is printed with shortened descriptions and with Hide Period Subtotals on Multi-Period Report and in Detail Format.

Account ID Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
	12/31/09			Change Fiscal Year End Ba	41,236.46	8,460.93	32,775.53 32,775.53
	1/1/10			Beginning Balance			
	2/28/10	AJE 7	GEN		3,238.29		
	3/31/10	AJE7	GEN		2,648.16		
	4/30/10	AJE7	GEN		2,610.31		
	4/30/10	AJE 18	GEN		4,291.70		
	5/31/10	AJE 7	GEN		4,291.70		
	5/31/10	AJE 18	GEN			4,291.70	
	6/30/10	AJE#7	GEN		3,282.99		
	6/30/10	AJE 18	GEN		5,197.29		
	7/31/10	AJE 7	GEN		2,725.07		
	7/31/10	AJE 18	GEN			5,197.29	
	8/31/10	AJE 7	GEN		7,300.38		
	9/30/10	AJE 7	GEN		4,432.52		
	11/30/10	AJE7	GEN		4,168.72		
	12/31/10	AJE 7	GEN		2,880.54		
	12/31/10			Change Fiscal Year End Ba	47,067.67	9,488.99	37,578.68 37,578.68
	1/1/11			Beginning Balance			
	1/31/11	AJE 7	GEN	Record Jan 2011 C	2,053.80		
	2/28/11	AJE 7	GEN	Record Feb 2011	2,331.55		
	3/31/11	AJE 7	GEN	Record March 2011	2,015.33		
	5/31/11	AJE 7	GEN	Record May 2011	5,372.14		
	12/31/11			Change Ending Balance	11,772.82		11,772.82 11,772.82

**Plaza STT
General Ledger**

For the Period From Jan 1, 2013 to Dec 31, 2015

Filter Criteria includes: 1) IDs: 68800. Report order is by ID. Report is printed with shortened descriptions and with Hide Period Subtotals on Multi-Period Report and in Detail Format.

Account ID Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
68800	1/1/13			Beginning Balance			
Utilities - Water	1/23/13	JAN 2013	PJ	TUTU PARK LTD	2,568.64		
	2/20/13	1/23-2/20/2	PJ	TUTU PARK LTD	1,852.14		
	3/21/13	MARCH 20	PJ	TUTU PARK LTD	2,103.49		
	4/23/13	04-23-2013	PJ	TUTU PARK LTD	2,334.22		
	5/21/13	MAY 2013	PJ	TUTU PARK LTD	1,817.92		
	6/24/13	06-24-2013	PJ	TUTU PARK LTD	2,692.29		
	7/25/13	07-25-2013	PJ	TUTU PARK LTD	2,438.81		
	8/23/13	08-23-2013	PJ	TUTU PARK LTD	2,287.01		
	9/26/13	09-26-2013	PJ	TUTU PARK LTD	2,784.15		
	10/29/13	10-29-2013	PJ	TUTU PARK LTD	2,669.57		
	11/25/13	11-25-2013	PJ	TUTU PARK LTD	2,355.72		
	12/18/13	2013-1228-	PJ	TUTU PARK LTD -	2,020.27		
				Change	27,924.23		27,924.23
	12/31/13			Fiscal Year End Ba			27,924.23
	1/1/14			Beginning Balance			
	1/24/14	01-24-2014	PJ	TUTU PARK LTD	3,092.17		
	3/1/14	02-27-2014	PJ	TUTU PARK LTD	2,783.22		
	3/24/14	03-24-2014	PJ	TUTU PARK LTD	2,103.20		
	4/22/14	04-22-2014	PJ	TUTU PARK LTD -	2,370.56		
	5/27/14	05-27-2014	PJ	TUTU PARK LTD	2,702.22		
	6/20/14	06-20-2014	PJ	TUTU PARK LTD	1,913.00		
	7/25/14	07-25-2014	PJ	TUTU PARK LTD	2,674.55		
	8/22/14	08-22-2014	PJ	TUTU PARK LTD	2,355.52		
	9/24/14	09-24-2014	PJ	TUTU PARK LTD -	2,501.00		
	10/27/14	10-27-2014	PJ	TUTU PARK LTD -	2,982.58		
	11/26/14	11-26-2014	PJ	TUTU PARK LTD -	2,669.54		
	12/23/14	12-23-2014	PJ	TUTU PARK LTD	2,392.92		
				Change	30,540.48		30,540.48
	12/31/14			Fiscal Year End Ba			30,540.48
	1/1/15			Beginning Balance			
	1/23/15	01-23-2015	PJ	TUTU PARK LTD	2,316.11		
	2/20/15	02-20-2015	PJ	TUTU PARK LTD	2,246.24		
	3/20/15	03-20-2015	PJ	TUTU PARK LTD	2,331.47		
	4/21/15	2015-0421-	PJ	TUTU PARK LTD	2,577.72		
	4/30/15	ALLOCATI	PJ	TUTU PARK LTD -	916.28		
				Change	10,387.82		10,387.82
	12/31/15			Ending Balance			10,387.82

EXHIBIT 7

**WATER CHARGES PAID BY PARTNERSHIP
FOR PLAZA EXTRA TUTU PARK AND
PLAZA EXTRA EAST - 2006 TO 2011**

YEAR	WATER CHARGES PAID BY PLAZA EXTRA TUTU PARK
2006	\$23,952.71
2007	\$26,028.76
2008	\$23,358.27
2009	\$32,775.53
2010	\$37,578.68
2011	\$11,772.82
TOTAL WATER CHARGES PLAZA EXTRA TUTU PARK	\$155,466.77
PLAZA EXTRA TUTU PARK, TOTAL SALES, 5/5/2004 TO 12/31/2011	\$217,895,269.93
PLAZA EXTRA TUTU PARK WATER CHARGES AS A PERCENTAGE OF ITS TOTAL SALES	.0713%
PLAZA EXTRA EAST TOTAL SALES, 5/5/2004 TO 12/31/2011	\$266,009,325.57
.0713% OF PLAZA EXTRA EAST TOTAL SALES	\$189,664.65
WATER CHARGES PAID BY PARTNERSHIP TO UNITED FOR PLAZA EXTRA EAST WATER USAGE, 5/5/2004 TO 12/31/2011	\$189,664.65

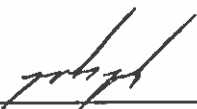
EXHIBIT 8

DECLARATION OF MAHER YUSUF

I, Maher Yusuf, pursuant to 28 U.S.C. § 1746, and V.I.R. Civ. P. 84, declare under the penalties of perjury under the laws of the United States Virgin Islands, that the following is true and correct:

1. United's water customers typically used trucks that could be filled up to a maximum of 5,000 gallons, although there were some that were larger. The charge for water is now 1.5 cents per gallon, which would translate into a total charge of \$75.00 for a 5,000 gallon fill-up. Water prices can vary depending on supply and demand, but prices for the 2004 to 2011 time period would have been very close to 1.5 cents/gallon.
2. The switch that permits water to flow from the standpipe to a delivery truck that is located inside the Plaza Extra East warehouse is connected to a timer. The practice from the time water began being sold and the switch was installed is that sometimes the customer would turn the switch and timer on, and sometimes a Plaza Extra employee would turn the switch and timer on. Regardless of who turned the switch and timer on, the process would consume a few seconds. The timer would turn off automatically, upon expiration of the time that was set, and nobody would have to manually turn it off.
3. The standpipe itself required no maintenance.
4. The pumps that bring water from the cistern to the standpipe and into a delivery truck usually last for a number of years. It is possible that a pump used for water sales had to be replaced in the 2004 to 2011 time period and it is possible that Plaza Extra paid for a replacement pump.
5. The cisterns that hold water for water sales have not needed to be repaired since water sales began.
6. The amount of time that a Plaza Extra cashier would spend accepting a cash payment from a water customer and preparing a receipt is less than a minute. For those customers who were billed for water, the generation of a bill and its mailing would take no more than a few minutes of a Plaza Extra employee's time.

Dated: July 6, 2020



Maher Yusuf

EXHIBIT 9

16. Denied, except it is admitted that the current supermarket bank accounts identified in this paragraph are kept by United for each of the three Plaza Extra stores.

17. Admitted.

18. Denied, except it is admitted that the brokerage accounts identified in this paragraph are maintained by United.

19. Denied.

20. Denied, except it is admitted that the corporations identified in ¶ 20(a)-(d) are owned 50/50 between Hamed and Yusuf or their families.

21-22. Denied.

23-25. Plaintiff's attempts to characterize, summarize, restate or quote portions of a privileged and confidential settlement communications are denied since such communications speak for themselves.

26. Denied.

27. Plaintiff's attempts to characterize, summarize, restate or quote communications from Yusuf are denied since the communications speak for themselves.

28-33. Denied.

Count I

34. Defendants reallege their responses to paragraphs 1 through 33 of this answer.

35-38. Denied.

Count II

39. Defendants reallege their responses to paragraphs 1 through 38 of this answer.

40-42. Denied.

Count III

43. Defendants reallege their responses to paragraphs 1 through 42 of this answer.

44-46. Denied.

AFFIRMATIVE DEFENSES

1. Defendants reserve the right to set forth herein alternative pleadings and defenses. While Defendants deny the existence of any partnership between Hamed and Yusuf as alleged in the Complaint, in the event the trier of fact determines a partnership exists, then such partnership gives rise to various defenses, duties and claims. Likewise, in the absence of a partnership, other defenses and claims exist. Hence, Defendants have set forth alternative pleadings to allege those defenses and claims which exist in the event there is or is not a partnership between Hamed and Yusuf.

2. The Complaint fails to state a claim upon which relief can be granted.

3. Plaintiff's claims are barred by the doctrine of laches.

4. Plaintiff's claims are barred by the doctrine of estoppel.

5. Plaintiff's claims are barred by the doctrines of unclean hands and unjust enrichment.

6. Plaintiff's claims are barred by his assumption of risk or contributory negligence.

7. Plaintiff assented to the parties' arrangement, which is contrary to the claims asserted in the Complaint, for more than 26 years and Plaintiff's claims, therefore, are barred by the doctrines of waiver and/or ratification.

8. Plaintiff's claims are barred by the statute of limitations.

9. Plaintiff's claims are barred by the statute of frauds.

10. Plaintiff's claims are barred by illegality, including, without limitation, federal and state tax regulations.

11. Plaintiff's claims are barred by his failure to comply with the law.

12. Plaintiff's claims are barred by the doctrines of *res judicata* and collateral estoppel as a result of, among other proceedings, the related criminal action, including, without limitation, the plea agreement entered therein.

13. Plaintiff's claims are barred by his or his agent's fraud and inequitable conduct.

14. Plaintiff lacks standing to bring this action.

15. Plaintiff's claims are barred because he has failed to join a party or parties necessary and indispensable to this action, *i.e.*, United's shareholders.

16. Plaintiff's claims are barred by his own material breach of the alleged oral agreement.

17. Plaintiff's alleged oral agreement is void for lack of mutual assent, *i.e.*, there was no mutual agreement as to the essential terms thereof.

18. Plaintiff's claims are barred because Defendants sufficiently performed all duties and obligations owed to Plaintiff including making all payments due.

19. Plaintiff's alleged oral agreement is voidable for failure of consideration.

20. Plaintiff is, at best, an ordinary creditor of the alleged partnership.

21. Plaintiff's claims are barred or diminished by Defendants' rights of recoupment and setoff.

22. Plaintiff failed to mitigate or avoid any of the alleged costs, damages, fees and/or expenses allegedly incurred or that may be incurred from the acts alleged in the Complaint.

23. Plaintiff seeks double or multiple recoveries for the same injury, which is not authorized by law.

24. Defendants reserve the right to amend this Answer to reflect additional affirmative defenses as may be revealed through discovery, further pleadings and further proceedings including, without limitation, the related criminal case.

COUNTERCLAIM

Pursuant to Fed. R. Civ. P. 13 and Super. Ct. R. 34, for their counterclaim against Plaintiff Mohammad Hamed (“Plaintiff” or “Hamed”) and the Additional Counterclaim Defendants named below, Defendants United Corporation d/b/a Plaza Extra (“United”) and Fathi Yusuf (“Yusuf”) (collectively, the “Defendants”) allege as follows:

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to V.I. Code Ann. tit. 4, § 76(a). Venue is proper pursuant to V.I. Code Ann. tit. 4, § 78(a).

PARTIES

2. Yusuf, a citizen and resident of St. Croix, U.S. Virgin Islands, owns 36% of the outstanding stock of United and is the registered agent, treasurer and secretary of United.

3. United is a U.S. Virgin Islands corporation, which was organized on January 15, 1979 and is currently in good standing. The owners and officers of United are and always have been Yusuf and his direct family members.

4. United is the fee simple owner of certain improved real property known as 4C and 4D Estate Sion Farm, St. Croix, U.S. Virgin Islands, which is improved with buildings that comprise the United Shopping Plaza (the “Shopping Center”). This land was purchased prior to the events at issue in this case.

5. United leases retail space at its Shopping Center to commercial tenants and is the sole owner of the “Plaza Extra” trade name/trademark, under which it does business.

6. Hamed is citizen of Jordan, who resides periodically on St. Croix. Hamed, upon information and belief, has resided in Jordan for approximately the last 15 years, having retired sometime in 1996.

7. Additional Counterclaim Defendant Waleed Hamed (“Waleed”) is a son of Hamed and a citizen and resident of St. Croix, U.S. Virgin Islands.

8. Additional Counterclaim Defendant Waheed Hamed (“Waheed”) is a son of Hamed and a citizen and resident of St. Thomas, U.S. Virgin Islands.

9. Additional Counterclaim Defendant Mufeed Hamed (“Mufeed”) is a son of Hamed and a citizen and resident of St. Croix, U.S. Virgin Islands.

10. Additional Counterclaim Defendant Hisham Hamed (“Hisham”) is a son of Hamed and a citizen and resident of St. Croix, U.S. Virgin Islands.

11. Additional Counterclaim Defendant Plessen Enterprises, Inc. (“Plessen”) is a U.S. Virgin Islands corporation, the outstanding stock of which is owned 50% by Hamed or his family members and 50% by Yusuf or his family members.

FACTS COMMON TO ALL COUNTS

I. The Nature Of The Relationship Between Hamed And Yusuf

12. In this Counterclaim, Defendants will plead in the alternative. Defendants deny the existence of any partnership between Hamed and Yusuf as alleged in the Complaint. In the event a partnership between Yusuf and Hamed is nevertheless found to exist, then such partnership gives rise to various duties and claims. Likewise, in the absence of a partnership, other claims exist. Hence, Defendants have set forth alternative pleadings to allege those claims which exist in the event there is or is not a partnership between Hamed and Yusuf.

13. Three supermarket stores were opened that are the subject of this suit. In or around 1986, United opened the first Plaza Extra supermarket in Sion Farm, St. Croix (“Plaza Extra – East”).

14. In 1993, United opened the Plaza Extra supermarket in Tutu Park Mall, St. Thomas (“Plaza Extra – Tutu Park”).

15. In 2000, United opened the Plaza Extra supermarket in Grove Place, St. Croix (“Plaza Extra – West”) (collectively, the “Plaza Extra Stores”). This Counterclaim relates to the ownership, operation and net profits of the three Plaza Extra Stores.

A. Scores Of Documents Contradict The Existence Of Any Partnership.

16. Hamed has sought, *inter alia*, a declaratory judgment as to the existence of a partnership between himself and Yusuf for the operation of the Plaza Extra Stores.

17. Specifically, Hamed contends he “is entitled to declaratory relief finding that all funds belonging to...[Hamed] held by United Corporation are held in (sic) either in the course of business as an agent, as Yusuf’s alter ego or as a constructive trust for...[Hamed], which must be returned forthwith.” (Complaint, ¶ 46).

18. Hamed further contends, “[i]n the alternative, Mohammad Hamed is entitled to declaratory relief finding that an amount equal to 50% of the Partnership profits and property held in United for distribution to or for the benefit of Yusuf are owed to Hamed under the Partnership Agreement or pursuant to a constructive trust for Hamed.” (Complaint, ¶ 46).

19. Hamed also seeks “a judicial determination that the defendant United Corporation would be unjustly enriched if it does not disburse the Partnership funds and property belonging to the plaintiff forthwith.” (Complaint, Prayer for Relief ¶ 9).

20. Despite Hamed's new-found contentions in his Complaint, the relationship between Hamed and Yusuf cannot be defined in traditional "western" legal terms as an "oral" partnership for the operation of the Plaza Extra Stores.

21. Every official document filed relating to the Plaza Extra Stores, representation made to a government agency, tax filing signed under penalty of perjury, and all taxes paid, unequivocally prove that a partnership never existed between Hamed and Yusuf.

22. In fact, these official filings demonstrate that the Plaza Extra Stores are, in fact, operated under United's corporate umbrella.

23. United has corporate officers and stockholders, none of whom are Hamed or members of his family. United owns assets and engages in businesses other than the Plaza Extra Stores.

24. United has corporate debts utilized to fund and operate the Plaza Extra Stores.

25. United has paid all the taxes on the income derived from the operation of the Plaza Extra Stores.

26. United was incorporated and operating for years before any business dealings or relationship between Hamed and Yusuf occurred.

27. Further, over the last ten years, a federal criminal investigation was conducted into the inner workings of the Plaza Extra Stores with knowledge of all allegedly involved. The conclusion of the U.S. Department of Justice was that United, which existed as represented on all official filings, was the owner of the Plaza Extra Stores as well as other assets, and that the ownership of United is as defined by its business records of stock ownership. Therefore, it has already been determined that the Plaza Extra Stores are not owned by any alleged "partnership" between Hamed and Yusuf.

28. As a result of this federal criminal investigation and case (V.I. Dist. Ct. Case No. 1:05-cr-00015-RLF-GWB) (the “criminal case”), serious criminal repercussions were looming against United, its owners, officers and certain management employees, including two of Hamed’s sons, Waleed and Waheed.

29. Not once during the decade long criminal case, did Hamed ever assert that he was a 50/50 partner in the business or enterprise under investigation for criminal conduct for failing to report taxable income from the Plaza Extra Stores. Rather, Hamed stood by quietly, out of the country, while it was determined that the corporate entity, United, would bear the entire weight of the criminal responsibility for under-reporting income from the Plaza Extra Stores.

30. United’s assets were frozen pending resolution of the criminal case. For more than ten years, Hamed made no claim to the frozen assets including millions of dollars in cash.

31. Ultimately, United entered into a plea agreement with the government, filed amended tax returns for multiple years, and paid millions of dollars in taxes to true-up the under-reporting issues. Hamed did not contribute or offer to contribute anything in this entire process.

32. Now that the criminal case is coming to conclusion, the taxes and penalties have been paid, and despite the volumes of official documentation to the contrary, Hamed, through his son and purported agent, Waleed, emerges from the shadows to contend that for more than 25 years, he had an “oral” partnership with Yusuf for the operation of the Plaza Extra Stores and with it, rights as a 50/50 partner.

B. Oral Statements Are Not Sufficient To Constitute Legal Admissions Or Contradict Documentary Evidence.

33. To support his position, Hamed relies upon oral representations which, for the most part, directly contradict the wealth of documentary evidence.

34. Further, Hamed, attempts to import a “western” legal meaning to the oral statements of both himself and Yusuf.

35. This effort is problematic for a number of reasons: 1) both Hamed and Yusuf use English as a second language and, therefore, at best, their English cannot be said to reflect a reliable level of fluency so as to constitute admissions and/or intent to attribute a “western” meaning to terms; and 2) the American legal terms that they sometimes use are understood differently in Islamic/Middle Eastern cultural and legal frameworks.

36. Both Hamed and Yusuf immigrated to the United States as adults. They were raised in a non-“western” legal system in which Islamic legal principles applied. Islamic law traditionally denotes *all* forms of associations between individuals as “partnerships.” However, “partnerships” under Islamic law have no direct corollary in “western” legal terms. Rather, some aspects or elements of a traditional “western”- defined partnership may exist but certain key elements required for a partnership with enforceable legal rights do not. Hence, the comparison breaks down rather quickly.

37. Further, there are many different types of “partnerships” under Islamic law, none of which are a mirror image of a “partnership” as defined in “western” legal terms¹. In particular, a form of partnership exists in Islamic law, which allows for receipt of profits in some proportion to the investment made but without managerial control or liability for debt. While this arrangement may be deemed a “partnership” in Islamic law, such an arrangement is not a partnership in the traditional “western” sense as it is missing essential hallmarks of a true partnership.

¹ Many scholarly articles in comparative law explain this phenomenon and the difficulty in translating legal relationships where no legal counterpart exists. Much has also been written as to the inability to correlate certain business relationships, duties and associations into “western” legal forms and the adverse financial impact this has had upon Islamic business relationships. Stewart, Glenn “Examining The Islamic Concepts of Ownership, Partnership and Equity Holdings from a Western Perspective.” *Glenn Stewart Observer*, 7 December, 2011. Web. 7 December, 2011; Bilal, Gohar “Business Organizations under Islamic Law – A Brief Overview, Proceeding of the Third Harvard University Forum on Islamic Finance: Local Challenges, Global Opportunities.” *Center for Middle Eastern Studies, Harvard University*, pp. 83-89. Web. (2011).

38. Yusuf is not a lawyer, has not studied law and has testified that he does not know the “legal definition” of the term “partner” or “partnership.”

39. Yusuf has testified that to the extent he has made references to someone as his “partner” it was done casually as opposed to denoting legal significance.

40. Oral statements (even if not complicated by language and cultural differences) are not dispositive of the nature of an arrangement, rather it is the actual transaction or interaction between the parties which defines the nature of their relationship.

41. Because the oral representations of Yusuf and Hamed do not constitute admissions of a traditional “western” partnership arrangement, Hamed cannot bear his burden of demonstrating he is Yusuf’s “50/50 partner.”

42. At best, Hamed has enjoyed an incredibly lucrative oral arrangement with Yusuf, his brother-in-law, whereby his relatively small loan/investment (\$225,000) and even less significant advances (approximately \$175,000) have been repaid more than a hundred fold, simply because Hamed provided funds when United needed them to complete its Shopping Center and because Hamed was “family.” That arrangement provided Hamed with not only repayment of the monies he loaned on a non-recourse basis, but also repaid him on a periodic basis with 50% of the net profits of the Plaza Extra Stores, which amounts varied depending upon the profitability of the business. Unfortunately for Hamed, this agreement does not provide him with an ownership interest in the Plaza Extra Stores. Nor does it afford Hamed the ability to exert any authority over the operations of the Plaza Extra Stores, to negotiate for their leases, or to determine whether to continue or liquidate their operations.

43. While Hamed may have loaned Yusuf money so that United could open Plaza Extra - East, that loan was repaid and the investment has provided significant returns. In any

event, a loan from a family member does not entitle him to an ownership interest in the business that benefited from the loan.

44. Nor can Hamed's services provide any consideration for payment of the 50% net profits, since he received payment for his labor as a salaried employee of United.

45. Thus, if United decides to end operations of the Plaza Extra Stores such that no further net profits exist or to charge a rental expense for internal accounting purposes for the retail space occupied by Plaza Extra - East, Hamed may not protest, object or exert any influence over such decisions.

46. Other than the oral representations, which Hamed would like to serve as the linchpin for his alleged "partnership," both Hamed and Yusuf have conducted their business dealings consistent with the written documentation, owning various assets in corporate forms with properly defined stock ownership. Hence, Hamed has never had any ownership interests in the Plaza Extra Stores and, therefore, can exert no control over the operations and decisions of the business.

II. History Of The Plaza Extra Stores – The Financing and the Investors

47. Before any of the Plaza Extra Stores ever opened, Yusuf wanted to "put something together for my children to secure their future."²

48. United bought the real estate located at Sion Farm, St. Croix, in fee simple. In addition, United needed capital to finance the construction of the Shopping Center, which Yusuf envisioned would house a supermarket and other businesses.

² Transcript utilized by Hamed during Preliminary Injunction hearing to allegedly demonstrate his "partnership" with Hamed. (Feb. 2, 2000, Yusuf Depo, p. 11, l. 14-15, taken in Ahmed Idheileh v. United Corporation and Faithi Yusuf, Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, Civil No. 156/1997).

49. Initially, Yusuf approached traditional bank lenders. These lenders advised that they were unwilling to provide construction loans but assured Yusuf that once the building was in place, they would provide a loan for the operations of the supermarket business.

50. However, United needed additional capital to fund the construction. At various points in time, when United needed additional resources that could not be secured fully through traditional lending, Yusuf would turn to family members and others to provide him loans or investments.

51. All of these loan/investments were handled in the same manner, to wit: a) monies were given to Yusuf as a loan or investment; b) Yusuf agreed to repay or provide a return on the investment, equal to a percentage of the net profit from the Plaza Extra Stores or the Shopping Center; c) the creditors/investors did not receive ownership interests in the businesses; d) the creditors/investors did not exercise control over the businesses and had no authority to make management decisions concerning the businesses; e) the creditors/investors were not liable for the debts of the Plaza Extra Stores or any mortgages or other encumbrances upon the Shopping Center; f) the creditors/investors were not obligated to make any further contributions beyond their initial investment; g) the creditors/investors were not liable for losses even though the return on their investment may vary depending upon the profitability of the business, and h) while Yusuf may discuss matters relating to the business with his creditors/investors, he retained full and complete authority to make management decisions on behalf of United as to its business operations and was not required to secure his creditor/investor's approval or permission.

52. At best, the creditors/investors had an oral agreement for repayment of their investment, which is subject to various defenses including, *inter alia*, the statute of frauds and statute of limitations.

A. Various Investors All Had Similar Investment Structures.

53. In the early 1980's, United needed additional capital to fund the construction of its Shopping Center, so Yusuf approached his brother, Ahmad Yusuf, in Kuwait, who loaned Yusuf the \$1.5 million dollars needed for the construction. Yusuf originally agreed to repay his brother for the loan by giving him 40% of the net profits of the Shopping Center. As additional funds were still needed, Yusuf's brother provided more funds, in consideration of which, Yusuf agreed to repay his brother by providing him 50% of the net profits of the Shopping Center. At each point, Yusuf characterized his arrangement with his brother as his "partner."³

54. After the additional funds from Yusuf's brother were exhausted, a further \$300,000 was needed to complete the construction. At this point, in mid-1983, Yusuf borrowed \$225,000.00 from his brother-in-law, Hamed. The loan was made on a non-recourse basis to assist Yusuf by providing funds to United so it could open Plaza Extra – East, just as Yusuf's brother had done earlier with the over \$1.5 million. In recognition of Hamed's loan/investment, and other advances subsequently made by Hamed of approximately \$175,000.00, Yusuf agreed that Hamed would receive a percentage of the net profits. Ultimately, it was agreed that Hamed was to receive 50% of the net profits of Plaza Extra-East as a return on this investment and repayment of the loan.

55. Hamed was to be repaid periodically and receive his return on his investment from the net profits of Plaza Extra – East on a set percentage basis. However, recovery of the return on the investment occurred upon a specific request. If Hamed sought to recover funds from his investment, he would coordinate with Yusuf and those funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to Yusuf from these net profits.

³ Feb. 2, 2000, Yusuf Depo, p. 11, l. 14; p.12, l. 13-17; Ahmed Idheileh v. United Corporation and Faithi Yusuf, Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, Civil Action File No. 156/1997.

56. Hamed received no ownership interest in Plaza Extra – East. Hamed, also had no managerial control over the operations of Plaza Extra – East.

57. Hamed's risk was limited to only the amount he loaned/invested. He was not liable for debts and was not a signatory or guarantor to the loans taken by United, which Yusuf guaranteed. Hence, as Hamed had very limited resources, he was never liable for losses nor obligated to make any contributions to cover losses, even though Hamed's return fluctuated with the profitability of the business.

58. After the Shopping Center was fully built (except for the supermarket) and was approximately 80% occupied by tenants, Yusuf, on behalf of United, pursued another traditional loan. Although United applied for a \$2.5 million dollar loan, it was only able to secure a \$1.1 million dollar loan from Banco Popular. Yusuf personally guaranteed United's loan and collateralized it with his personal property. Neither Yusuf's brother nor Hamed were obligated under United's loan as guarantors or otherwise.

59. As additional monies were still required to open the supermarket at Plaza Extra - East, Yusuf next turned to his nephews and, likewise, offered a repayment plan that was based upon a percentage of profits. Similarly, at this point Hamed provided additional funds (the \$175,000.00) and was to receive a return on that loan/investment based upon a percentage of the net profits from Plaza Extra – East.

60. While certain funds were provided by the nephews, they were unable to continue their support and requested a return of their investment. Unable to return their loan/investment immediately, Yusuf agreed to pay his nephews a set amount for both a return of their investment and his use of their investment funds calculated at 12% interest on their investment funds plus a penalty of \$75,000.00 each. Yusuf offered the same option to Hamed as well. Hamed agreed to let his investment remain rather than demanding immediate repayment in exchange for a greater

repayment/return arrangement. It was at this point, that it was agreed that Hamed would be entitled to 50% of the net profits of Plaza Extra – East as his return on his investment/loan.

61. In or about February 1986, Yusuf secured a loan on behalf of United from First Pennsylvania Bank for \$2.5 million. From these loan proceeds, United paid the \$1.1 million loan from Banco Popular. The remaining funds were used to purchase inventory and additional equipment needed to open Plaza Extra – East. Just as with the prior loan, Yusuf was the guarantor and pledged his personal assets as collateral. Neither Hamed nor Yusuf's brother were signatories to the loan or acted as guarantors.

62. Hamed did not own any real property, investments or other assets to use as security for the loan obtained by United, nor did any of his family members.

63. Other loans were guaranteed by Yusuf as well to insure the opening of the Plaza Extra – East store.

64. The business took time to develop and there were set backs. Yusuf worked around the clock to keep the business going and it eventually became profitable.

65. However, in 1992, Plaza Extra - East was destroyed in a fire.

66. As the owner, United insured Plaza Extra - East and was the sole beneficiary of the subject insurance policy, the proceeds of which were used to rebuild Plaza Extra - East.

67. Neither Hamed nor Yusuf's brother were obligated to contribute to the rebuilding efforts of Plaza Extra – East nor liable for any losses it sustained.

B. The Idheileh - \$750,000 Investment

68. As Plaza Extra – East was being rebuilt, a Mr. Ahmad Idheileh approached Yusuf regarding a store in St. Thomas.

69. United entered into a Joint Venture agreement with Mr. Idheileh. Just as with Plaza Extra – East, Mr. Idheileh loaned certain monies for the opening of the store. His risk

was limited to the amount he loaned/invested. He was to receive, as his return on the investment, a percentage of the net profits of Plaza Extra –Tutu Park. However, Plaza Extra –Tutu Park needed much more capital than the Idheileh loan/investment to open and operate. Hence, Yusuf secured and guaranteed the loan given to United for Plaza Extra-Tutu Park, collateralizing the loan with his own real property. Just as with Plaza Extra – East, neither Hamed nor Idheileh bore any liability for these bank loans or risks.

70. Plaza Extra – Tutu Park took time before it was profitable and faced significant competition with the opening of the Cost-U-Less store. As a result, there was financial pressure on the business and strained relations with Idheileh. While Idheileh and United attempted to resolve their differences, on January 16, 1994, they ultimately agreed to part ways. They formalized their agreement in a written Termination Agreement, whereby Idheileh was paid a sum certain as agreed by the parties.

71. Three years later, in 1997, once Plaza Extra – Tutu Park was operating and successful, Idheileh sued both United and Yusuf. Idheileh contended he “owned” 33% of Plaza Extra –Tutu Park and that the Termination Agreement was signed under duress. Idheileh lost as the Court found that the Termination Agreement was enforceable. Further, the Joint Venture document reflected that no ownership interest was ever given. Rather, it set out the terms of the investment, which mirror the earlier investor arrangements, to wit: a) “*United* plans to open and operate a supermarket...at Tutu Park,” b), “United wishes to secure further *investment* in the supermarket,” c) “Idheileh agrees to *invest* \$750,000 in the supermarket,” d) “Idheileh will receive *33% of the net profit* of the supermarket,” e) “payments are made pursuant to...*agreement*...and not made unless both parties ...agree,” f) “*United* shall *retain complete control* over all decisions relating to the supermarket except to the extent it may delegate...”.

72. Despite efforts by Hamed to use testimony of Yusuf from the Idheileh case, the issue of a partnership between Hamed and Yusuf was not an issue for adjudication in that case and there was no such judicial finding. Lastly, Idheileh testified that he had never seen Hamed once in any of his dealings with Yusuf and did not believe him to have any interest whatsoever in Plaza Extra – Tutu Park.

III. None of the Hallmarks of a Partnership Exist.

A. Hamed Was A United Employee Without Managerial Control.

73. Hamed was employed by United as a warehouse receiving supervisor. He received a salary for his labor and services until 1996, when he retired and returned to Jordan.

74. Hamed's job was to make sure that the inventory was properly accounted for and not subject to theft. Hamed had no direct access to the safe and no signatory authority on any of the bank accounts of the Plaza Extra Stores. Hamed had no authority in the management and operations of Plaza Extra – East. As he was not fluent in English, Hamed had no role in the management or supervision of the roughly 100 to 150 employees. He also did not place inventory orders because, as Hamed has previously testified, he cannot read English.

75. Hamed received weekly checks for his wages and, upon information and belief, has always filed his tax returns as an employee of United. Further, United employed each of Hamed's four sons, Waleed, Waheed, Mufeed, and Hisham (collectively, the "Hamed Sons") as managers. Each of the Hamed Sons was assigned to one of the three Plaza Extra Stores operated by United. Hamed has acknowledged under oath that the Hamed Sons are employees of United.

76. The Hamed Sons worked for United at the same time as Hamed. Their roles did not change following Hamed's retirement. Rather, Waleed, for example, was a manager during the period that his father worked at United and remained a manager thereafter. His duties, responsibilities and obligations did not change or increase after his father's retirement.

77. Hamed never received any ownership interest in the Plaza Extra Stores, ownership control, or stock in United, which is the actual owner of the Plaza Extra Stores. Hamed did not participate in the management and decision making of the Plaza Extra Stores. Hence, upon his retirement, Hamed had no ownership authority to provide to Waleed to act as his “authorized agent.” Indeed, the September 12, 2012, power of attorney given by Hamed to Waleed makes no mention of any partnership or Hamed’s authority as a partner.

78. Rather, it was Yusuf’s business acumen, management, and leadership that enabled the Plaza Extra Stores to become a successful grocery business growing to three locations with over 600 employees.

79. As Hamed has admitted under oath, Yusuf was always in charge of all operations of the Plaza Extra Stores. Hamed has readily admitted that he has not worked in a management capacity but instead that “Mr. Yusuf, he is in charge for everybody” and in charge of all the Plaza Extra Stores.

B. Unlike True Partners, Hamed Was Not Responsible For Liabilities of the Plaza Extra Stores.

80. Hamed, unlike Yusuf, is not a guarantor of any loan or lease of United used to fund or operate the Plaza Extra Stores.

81. In a true partnership, each partner is responsible for the liabilities of the partnership. Joint risk, exposure and liability are essential hallmarks of an actual partnership. Over the years, various lawsuits have been initiated against United and/or Yusuf relating to events and operations at the Plaza Extra Stores. Not once has Hamed ever been named as a party or alleged to be an owner of the Plaza Extra Stores in any lawsuit. Notably, Yusuf never sought to include Hamed as a party or otherwise join him in such suits even when facing such risk and liability. Moreover, when defending the criminal case and facing the prospect of paying millions of dollars in taxes and penalties, Yusuf did not contend that Hamed was a 50% owner and, thus,

50% responsible. If ever there was a time to confirm an alleged “partnership,” it is when facing serious exposure. This was never done because Hamed was not a true partner or owner of the Plaza Extra Stores.

C. Hamed Had Not Filed Taxes for Over a Decade and When He Did File, He Never Claimed a Partnership Interest.

82. Hamed has never filed (before the commencement of this litigation) a single U.S. Partnership Return (Form 1065) concerning the Plaza Extra Stores.

83. In fact, after retiring in 1996, Hamed never filed any tax returns at all. It was not until after he decided to file this suit, once the criminal case was concluding, that he decided to file a tax return.

84. For a period in excess of 25 years, Hamed never demanded a Schedule K-1 Partnership Schedule from United, Yusuf or the Plaza Extra Stores. Hamed never (before the commencement of this litigation) reported his alleged “partnership interest” in the Plaza Extra Stores to any third-party or governmental agency.

85. Additionally, since 1986, upon information and belief, Hamed never asserted in a single legal document or tax filing that he was a partner of any entity, let alone the partnership alleged in the Complaint.

86. Hamed never filed a return (before the commencement of this litigation) to show any dividends from United, nor has he ever, personally or through his purported agent, Waleed, declared any interest in United. Not a single record indicates any ownership interest by Hamed or any of his children in United.

87. Since 1986, not a single Income Tax Return, Schedule or any other tax document has identified Hamed as having any equity or shareholder interest in United or the Plaza Extra Stores.

88. In the criminal case, Hamed's sons (Waleed and Waheed) always represented to the U.S. Government that they were employees of United, with no interest in the shares of United or ownership in a partnership.

89. Since its inception in 1979, United has reported all of its tax obligations – and has filed all of its tax returns – as a *corporation* under either Subchapters “C” or “S” of the Internal Revenue Code (“IRC”) – and never as a *partnership* under any partnership designation of the IRC or otherwise.

D. No Property Was Acquired in Partnership Name.

90. No properties were ever acquired in a partnership name, or any entity resembling a partnership. Rather, if an investment or property was acquired, funds from United would be paid to Yusuf, who would then purchase a property and title it either in both Hamed and Yusuf's name or purchase it in the name of a corporation which they each owned jointly.

91. Hence, Hamed and Yusuf have always demonstrated clean separation of businesses by forming separate corporations to invest in other business activities. Hamed and Yusuf formed the following corporations, owned in equal shares, as follows:

- i. **Sixteen Plus Corporation**, a corporation with 1600 shares issued, owned equally between the Yusuf and Hamed families;
- ii. **Y&H Investments, Inc.**, a corporation with 100 shares issued, owned equally by the Yusuf and Hamed families;
- iii. **Plessen Enterprises, Inc.**, a corporation with 1600 shares issued, owned equally between the Yusuf and Hamed families; and
- iv. **Peter's Farm Investment Corporation**, a corporation with 1000 shares issued, owned equally between Hamed and Yusuf.

E. Hamed Was Silent As To His Alleged Partnership in the Plaza Extra Stores When United, Yusuf And His Sons Were Facing Criminal Charges And Huge Tax Liabilities.

92. On September 3, 2003, the U.S. Department of Justice indicted United, Yusuf, Maher Yusuf, Waleed, and Waheed in the criminal case.

93. Upon information and belief, Hamed was never indicted because his employment with United was terminated in 1996, and because Hamed had no other management or equity interest in United or the Plaza Extra Stores.

94. Each indicted defendant in the criminal case retained separate defense counsel.

95. In light of the fact that all parties to the criminal case were in agreement as to the corporate structure and operations of United, the parties executed a joint defense agreement, whereby all communications between the criminal defense attorneys could be shared simultaneously without waiver of confidentiality or privileges.

96. The defendants in the criminal case retained a team of Certified Public Accountants and a Tax Attorney to assist the parties in the preparation of the Federal Corporate Tax Returns to comply with the U.S. Justice Department's demand for tax returns, payment of past taxes, interest, and penalties. As of the date of this pleading, the criminal case will have been pending for more than ten years.

97. During this extended period of time, Hamed never sought to intervene in the criminal case to assert that he is a partner of United or Yusuf, or that he has any interest in the Plaza Extra Stores.

98. On March 19, 2010, the parties' defense attorneys, working pursuant to the joint defense agreement, negotiated a plea agreement. The terms of the plea agreement called for the dismissal of all criminal counts against the individual defendants in exchange for United pleading guilty to one count of tax evasion, and the payment of substantial taxes and penalties.

99. At no time, did Hamed’s purported agent, Waleed, or his co-defendant, Waheed, raise the issue of a partnership as alleged in the Complaint.

100. In addition, the plea agreement called for the parties to file accurate U.S. Federal Tax Returns and Gross Receipt Returns with the Virgin Islands Bureau of Internal Revenue and the U.S. Internal Revenue Service. Nothing in the plea agreement required the filing of any partnership returns because no partnership existed as acknowledged by the attorneys of Waleed and Waheed.

101. Neither Waleed nor Waheed ever indicated to the U.S. Justice Department that the business arrangement between Hamed and United or Yusuf was anything other than an employment relationship. As such, until the filing of this action, no record existed of any purported “partnership” between Hamed and Yusuf.

IV. The Criminal Case Reveals That Hamed And Waleed Converted Monies from the Plaza Extra Stores.

102. In September of 2010, Yusuf received a partial copy of the FBI file, records, and documents, electronically reproduced and stored on a hard drive. The hard drive contained thousands of documents including bank statements and copies of cancelled checks. The documents were organized under the names of various individuals in the Hamed and Yusuf families. In other words, whatever the FBI found for any specific person, they would scan and organize the documents under that person’s name.

103. Upon review of these documents, Defendants discovered defalcation and conversion of substantial assets including cash from United by Hamed and Waleed.

104. During a search of the documents and files delivered by the U.S. Government, United reviewed documents comprising tax returns for Waleed. An examination of Waleed’s tax returns revealed the following significant assets:

a. Tax Year 1992 (Stocks & Investments)\$ 408,572.00

b. Tax Year 1993 (Stocks & Investments)\$7,587,483.00

105. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Waleed through either a) his unlawful access to monies and other properties belonging to United since Waleed never held any other employment since 1986, other than his employment with United, or, b) his misappropriation of monies which were “partnership” funds for which Waleed may be individually liable, or for which Hamed may be liable in the event that Waleed was acting as Hamed’s authorized agent when removing such funds.

106. Upon information and belief, Hamed knew of or directed Waleed’s misconduct and personally benefited from his agent’s defalcation and conversion of millions of dollars from United.

107. For example, Waleed and Hamed misappropriated funds, which Yusuf and Hamed had agreed to send to a charity in West Bank, Palestine. The money was designated for the building of a concrete batch plant (the “Plant”) in an impoverished area to provide the poor with employment opportunities.

108. In 1996, Waleed, as a managerial employee of United, was an authorized co-signatory with Yusuf on various bank accounts in St. Martin and custodian of an account in Waleed’s name.

109. Yusuf authorized Waleed to send \$1 million to Hamed in the West Bank as a charitable donation on behalf of United. Hamed was required to disperse the money to two local managers that were hired to set up the Plant, which was eventually formed and employed about 38 of the poor in the community.

110. Eventually, Yusuf met in the West Bank with the two managers of the Plant, which was supposed to have been purchased with the \$1 million that was sent to Hamed through his agent, Waleed.

111. Yusuf inquired of the managers regarding the operations of the Plant. Yusuf was advised that they were losing sales because they had no money to buy a pump.

112. Yusuf was informed that they did not receive \$1 million dollars, but had received only \$662,000.00 from Hamed.

113. In fact, bank records revealed that Hamed had actually received \$2 million dollars, instead of the \$1 million dollars authorized by Yusuf.

114. Upon review of the records received from the U.S. Government, it was revealed that Hamed or Waleed had pocketed \$1,338,000 of the \$2 million dollars transferred to Hamed by his son, Waleed, and only \$662,000 was actually distributed to the charitable project.

V. The Current Controversy Has Resulted in Deadlock and Inability to Operate Plessen.

115. The current controversy between the Hamed and Yusuf families has negatively impacted the ability of Plessen to function and operate.

116. The stalemate between the Yusuf and Hamed families has resulted in deadlock as to the operations of Plessen.

117. In order to preserve the assets of Plessen and insure that its obligations are timely met, Yusuf seeks to dissolve and liquidate Plessen.

VI. United Owned Investments and Businesses In Which Hamed Was Never A Part.

118. United maintains other investments and businesses separate from its operation of the Plaza Extra Stores. At no time did Hamed or any of his children ever participate, manage, or have any interest in United's other operations. Hamed has conceded under oath that he has no interest in United or any of its operations not related to the Plaza Extra Stores.

119. Other than receiving 50% of the net profits of the Plaza Extra Stores, Hamed never received any proceeds, profits, or distributions from United's other operations, which primarily consist of the rents generated by United's real estate holdings.

VII. In the Event of a Partnership, What Were Its Terms?

120. Although Yusuf contends he has no partnership with Hamed, to the extent that their relationship is determined to be a partnership (the "Alleged Partnership"), Yusuf alleges that the parties engaged in a course of conduct and possessed certain understandings as to how monies for the Alleged Partnership were accounted for and to be paid.

121. Further, in the event that the Alleged Partnership is found to exist, Hamed, as a partner owes certain fiduciary duties to the Alleged Partnership and to Yusuf as his partner. Those duties, among other things, include duties of loyalty and to act in the best interests of the Alleged Partnership.

122. Hamed's fiduciary duties to the Alleged Partnership and to Yusuf relate not only to his individual actions as a partner but also, to the extent he purports to act as a partner through his authorized agent, then Hamed's fiduciary duties and, thus, liability for breaches of any such duties, extends to the actions of his authorized agent.

123. Waleed's misappropriation of monies from the Plaza Extra Stores, if acting as an agent of Hamed or at his direction and with his knowledge constitutes a breach of Hamed's fiduciary duties to the Alleged Partnership and to Yusuf for which Hamed is liable.

124. In the event the Alleged Partnership is determined to exist, then Hamed would be responsible for any liabilities of the Alleged Partnership.

VIII. Rent

125. United is the sole owner of the Shopping Center which contains the retail premises where Plaza Extra - East is located.

126. United consistently maintained that it is entitled to rent payments as an internal accounting expense to be utilized as an offset against income from Plaza Extra- East and which thereby reduces the net profits. At present, United has a motion pending to withdraw past due rents to which it is entitled. In the event that United is unable to recover the rent it seeks for internal accounting expense purposes and/or in the event that the Alleged Partnership is deemed to exist, then United seeks to recover the past due rent from the Alleged Partnership in accordance with the manner in which rent has been collected in the past.

127. Since 1986, United and the Alleged Partnership have always agreed that the value of any rent due to United for any retail space used by Plaza Extra – East would be withdrawn from the gross sales proceeds from Plaza Extra – East from time to time. Since 1986, the parties have customarily settled all rents due upon demand by United.

128. Historically, it was determined that United was entitled to rent for the premises occupied by Plaza Extra – East. From the beginning to December 31, 1993, United was paid in full for the rent.

129. For the period of January 1, 1994 through May 4, 2004, United made demand but Hamed, on behalf of the Alleged Partnership, refused to allow United to withdraw the rent value of \$3,999,679.73 (69,680 sq. ft. at \$5.55 sq. ft.) from the gross revenues of Plaza Extra – East.

130. However, for the period of May 5, 2004 through December 31, 2011, the parties agreed that the rent due and owing United was \$5,408,806.74, which amounts to a monthly rent of \$58,791.38. The monthly rent of \$58,791.38 for Plaza Extra – East was calculated based on the yearly sales of Plaza Extra – Tutu Park. The sales were divided by the square footage to

arrive at a percentage amount - 2.0333%. That percentage amount then was multiplied by the sales of Plaza Extra – East. See Exhibit 1 (percentage highlighted in yellow).

131. On or about February 7, 2012, a check in the amount of \$5,408,806.74 was issued to United from the earnings of Plaza Extra - East. See Copy of Check #64866 attached as **Exhibit 2**.

132. Consistent with the parties' understanding as to payment of rent to United, Hamed, either individually or as a partner of the Alleged Partnership, never raised any issue concerning the statute of limitations or denied that rent was owed to United because it has always been the parties' practice to settle rents when United makes a demand, regardless of when such demand takes place.

133. On or about May 17, 2013, United, utilizing the same formula previously agreed upon to calculate the rent, again made demand for rent due for the period of January 1, 2012 through May 30, 2013.

134. Hamed has made clear that it is his intention not to authorize rent payments to United for the occupancy of Plaza Extra – East. As such, in the event that the Alleged Partnership is deemed to exist, the Alleged Partnership not only owes rent to United but also is an unlawful holdover tenant of the premises occupied by Plaza Extra-East.

135. Further, because the Alleged Partnership failed to pay the rent as demanded by United, in September of 2010, United, through Yusuf, orally noticed the Alleged Partnership by informing Hamed's authorized agent, Waleed, of United's intent to terminate the occupancy agreement for Plaza Extra – East effective December 31, 2011.

136. When Hamed, on behalf of the Alleged Partnership, refused to accept the termination notice or cause the premises to be vacated, United issued a written notice to vacate on January 1, 2012.

137. United's notice called for an increase in the rent, in the event the premises were not vacated, to \$200,000 a month for the period of January 1, 2012 to March 31, 2012, and \$250,000 for any month after April 1, 2012 should Plaza Extra – East continue occupying the premises despite such notice.

138. Therefore, for the period of January 1, 2012 through September 31, 2012, United is entitled to rent from the Alleged Partnership in the amount of \$1,800,000.

139. Despite United's termination of the oral, month to month occupancy agreement for the premises occupied by Plaza Extra-East and its demand that such premises be vacated, the Alleged Partnership continues to enjoy the benefits of the operations of Plaza Extra – East store including, but not limited to, the use of valuable retail space located at the Shopping Center, without paying the outstanding rent.

140. Through December 31, 2013, the total rent due and outstanding for the premises occupied by Plaza Extra – East is \$5,410,672.85. This unpaid rent is an amount certain, liquidated, and subject to immediate collection from the Alleged Partnership.

COUNT I
DEFENDANTS' CLAIM FOR
DECLARATORY RELIEF THAT NO PARTNERSHIP EXISTS

141. Paragraphs 1 through 140 of this Counterclaim are realleged.

142. There exists an actual controversy as to whether there was ever a partnership formed between Yusuf and Hamed for the operation of the Plaza Extra Stores.

143. Defendants seek a declaratory judgment which confirms that United is the sole owner and operator of the Plaza Extra Stores, that United has full and complete authority over decisions and actions taken in and for the Plaza Extra Stores, and that United has ownership of all assets held in United accounts or in United's name.

144. United is further entitled to a declaratory judgment that it has the power and authority to account for its net profits, taking into account any yet unpaid expenses, including past due rents. To the extent that Yusuf orally agreed to provide Hamed with a return on his investment in an amount equal to 50% of the net profits of the Plaza Extra Stores, which are owned and operated by United, then such net profits must net out all unpaid rent and all competing claims for recoupment and setoff.

COUNT II
DECLARATORY RELIEF

145. Paragraphs 1 through 144 of this Counterclaim are realleged.

146. In the event that the Alleged Partnership is determined to exist, there exists an actual controversy between Hamed and Yusuf as to the terms of the Alleged Partnership, its duration, their respective rights, interests, and obligations concerning the Plaza Extra Stores and the disposition of the assets and liabilities of these stores. This Court should resolve the controversy by entering an appropriate declaratory judgment.

COUNT III
CONVERSION

147. Paragraphs 1 through 146 of this Counterclaim are realleged.

148. Hamed and Waleed, acting individually and as agent for Hamed, have unlawfully defalcated and converted to their own benefit and gain substantial funds belonging to Defendants.

149. Defendants never authorized these funds to be appropriated to the personal use of Hamed or Waleed.

150. Hamed and Waleed are therefore liable to Defendants for all funds converted for their personal gain and benefit in an amount to be determined after a full accounting is completed.

COUNT IV
ACCOUNTING

151. Paragraphs 1 through 150 of this Counterclaim are realleged.

152. In the event that the Alleged Partnership is determined to exist, then Hamed owes a fiduciary duty of loyalty and care to the Alleged Partnership and to Yusuf as his partner. These fiduciary duties obligate Hamed to, among other things, account to Yusuf for all funds generated by the Plaza Extra Stores taken for his or his families' personal use without Yusuf's knowledge or consent.

153. Despite repeated demands therefore, Hamed has failed and refused to account to Yusuf for all assets of the Plaza Extra Stores taken or converted by Hamed or his agents. Accordingly, Yusuf is entitled to a full accounting of all funds taken or converted by Hamed and his agents from the assets and revenues generated by the Plaza Extra Stores.

COUNT V
RESTITUTION

154. Paragraphs 1 through 153 of this Counterclaim are realleged.

155. Hamed and his agents have obtained in excess of \$7 million of the Plaza Extra Stores' monies under such circumstances that in equity and good conscience they ought not retain and the Hamed Sons participated and aided and abetted in this conduct by accepting funds from the Plaza Extra Stores and, among other things, using them to purchase and improve properties for their own personal benefit.

156. Defendants are, therefore, entitled to restitution in the form of a constructive trust over any assets purchased with those funds; an equitable lien over such assets; and disgorgement of any profits made from the use of the Plaza Extra Stores' funds or assets purchased with the use of such funds.

COUNT VI
UNJUST ENRICHMENT AND
IMPOSITION OF A CONSTRUCTIVE TRUST

157. Paragraphs 1 through 156 of this Counterclaim are realleged.

158. Hamed and his agents have obtained in excess of \$7 million of the Plaza Extra Stores' monies under such circumstances that in equity and good conscience they ought not retain and the Hamed Sons participated and aided and abetted in the conduct by accepting funds from the Plaza Extra Stores and, among other things, using them to purchase and improve properties for their own personal benefit.

159. Defendants are entitled to the imposition of constructive trusts, equitable liens, and disgorgement of all profits in order to prevent Hamed and the Hamed Sons from being unjustly enriched by money ill-gotten from the Plaza Extra Stores.

COUNT VIII
BREACH OF FIDUCIARY DUTY

160. Paragraphs 1 through 159 of this Counterclaim are realleged.

161. In the event that the Alleged Partnership is determined to exist, Hamed owes Yusuf a fiduciary duty to act in a manner consistent with their mutual interests and not to deal with him in a manner that promotes only Hamed's or his families' interests to the detriment of Yusuf.

162. Hamed breached his fiduciary duty to Yusuf by, among other things, failing to disclose millions of dollars of Plaza Extra Stores' funds converted by Hamed or his agents and otherwise acting in a manner inconsistent with Yusuf's interests and welfare, and by subordinating Yusuf's interests in the Plaza Extra Stores to those of Hamed and his family.

163. As a result of these breaches of fiduciary duties, Yusuf has been damaged.

COUNT VIII
DISSOLUTION OF ALLEGED PARTNERSHIP

164. Paragraphs 1 through 163 of this Counterclaim are realleged.

165. Although Defendants deny the existence of any partnership with Hamed, in the event the Alleged Partnership is determined to exist, then Yusuf is entitled to dissolution of the Alleged Partnership and to wind up its affairs, pursuant to the Uniform Partnership Act, in that such partnership would be an oral at-will partnership and Yusuf provided notice of his intent to terminate any business relationship (including any partnership) with Hamed in March of 2012.

166. Since Hamed has refused to consent to a dissolution of the Alleged Partnership, Defendants are entitled to a prompt and orderly dissolution of the Alleged Partnership under the Uniform Partnership Act.

COUNT IX
DISSOLUTION OF PLESSSEN

167. Paragraphs 1 through 166 of this Counterclaim are realleged.

168. Because the equity of Plessen is owned equally by the Hamed and Yusuf families who have an irreconcilable disagreement on how to continue the business operations of this company, it should be dissolved and its assets liquidated according to law.

COUNT X
APPOINTMENT OF RECEIVER

169. Paragraphs 1 through 168 of this Counterclaim are realleged.

170. In the event that the Alleged Partnership is determined to exist, a qualified, neutral business person should be appointed as Receiver for the Alleged Partnership to operate the Plaza Extra Stores and as Receiver for Plessen.

171. The Receiver should liquidate the assets of the Plaza Extra Stores and Plessen and divide the net proceeds amongst Hamed and Yusuf according to their respective interests, as declared by this Court, after accounting for all liabilities and claims for recoupment and setoff

since Yusuf desires to immediately terminate any and all business relations Hamed may have with either of the Defendants.

COUNT XI
RENT FOR RETAIL SPACE BAY 1

172. Paragraphs 1 through 171 of this Counterclaim are realleged.

173. United has historically deducted rent for Plaza Extra – East as an internal expense and is entitled to deduct same so as to arrive at a proper calculation of the net profits from Plaza Extra – East.

174. In the alternative, in the event that the Alleged Partnership is determined to exist, then United is entitled to deduct all rent currently due and owing to arrive at the proper calculation of the net profits from Plaza Extra – East.

175. Whether an internal expense or a debt of the Alleged Partnership, for the period of January 1, 1994 through May 4, 2004, United is entitled to rent in the amount of \$3,999,679.73 for Bay No. 1 (69,680 sq. ft. of retail space at \$5.55 sq. ft.) for the operations of the Plaza Extra – East.

176. Whether an internal expense or a debt of the Alleged Partnership, for the period of January 1, 2012 to date, United is entitled to rent for Bay No. 1 (69,680 sq. ft. of retail space at the current monthly rate of \$58,791.38).

177. In the event that the Alleged Partnership is determined to exist, then Hamed is in violation of the agreement to pay rent to United in an amount exceeding \$5,293,090.09.

178. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bay 1, and to recover possession of its premises currently occupied by Plaza Extra – East.

COUNT XII
PAST RENT FOR RETAIL SPACES BAYS 5 & 8

179. Paragraphs 1 through 178 of this Counterclaim are realleged.

180. United provided Plaza Extra – East with retail spaces Bay 5 & 8 for various time periods to increase the storage and capacity of Bay 1 (the main retail space where Plaza Extra – East is located).

181. Bay No. 5 (3,125 sq. ft. of retail space) was utilized for storage and quick access to various inventories used in the operations of Plaza Extra – East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from May 1, 1994 through October 31, 2001 at rate of \$12.00 per sq. ft.

182. Bay No. 8 (6,250 sq ft. of retail space) was utilized for the operations of Plaza Extra – East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from April 1, 2008 through May 30, 2013 at a rate of \$16.15 per sq. ft.

183. In the event that the Alleged Partnership is determined to exist, Hamed has refused to acknowledge his obligation to pay United the outstanding rent for Bays 5 and 8.

184. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bays 5 and 8 in the amount of \$793,984.38.

COUNT XIII
CIVIL CONSPIRACY

185. Paragraphs 1 through 184 of this Counterclaim are realleged.

186. Hamed and the Hamed Sons agreed to perform the wrongful acts and accomplish the wrongful ends alleged in this Counterclaim, and they aided and abetted each other and acted on that agreement.

187. As a result of such conspiracy, the Defendants have been damaged.

Accordingly, Defendants respectfully request entry of judgment in their favor providing the following relief:

- i. a declaratory judgment declaring the parties' rights and obligations with respect to the Plaza Extra Stores;

- ii. a full accounting of all funds taken by Hamed or his agents from the Plaza Extra Stores without Defendants' authorization;
- iii. a judgment declaring that Hamed and the Hamed Sons hold any assets purchased with funds improperly taken from the Plaza Extra Stores as constructive trustees for Defendants and imposing a constructive trust or equitable lien in favor of Defendants over all funds taken without authorization by Hamed or his agents or assets purchased with such funds;
- iv. awarding compensatory, consequential, and punitive damages in an amount according to proof at trial;
- v. appointing a Receiver to dissolve and wind down the affairs of any joint venture/partnership determined to exist between Hamed and Yusuf and to dissolve and liquidate Plessen;
- vi. a judgment for all rent found due and owing for the premises occupied by Plaza Extra-East and ordering immediate restitution of such premises to United;
- vii. awarding Defendants their reasonable attorneys' fees and costs in defending against the Complaint and prosecuting this Counterclaim; and
- viii. providing such other and further relief as the Court deems just and proper.

Pursuant to Fed. R. Civ. P. 38(b), Defendants demand a trial by jury of all issues triable by right to a jury.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: December 23, 2013

By: _____

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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2013, I caused the foregoing **ANSWER AND COUNTERCLAIM** to be served upon the following via e-mail:

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EXHIBIT 10

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

MOHAMMAD HAMED, by his)
authorized agent **WALEED HAMED**,)
)
 Plaintiff/Counterclaim Defendant,)
)
 vs.)
)
 FATHI YUSUF and)
 UNITED CORPORATION,)
)
 Defendants/Counterclaimants,)
)
 vs.)
)
 WALEED HAMED, WAHEED)
 HAMED, MUFEED HAMED,)
 HISHAM HAMED,)
 and **PLESSEN ENTERPRISES, INC.**,)
)
 Counterclaim Defendants.)
 _____)

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
RE THE STATUTE OF LIMITATIONS DEFENSE BARRING DEFENDANTS'
CLAIMS PRIOR TO SEPTEMBER 16, 2006**

Defendants have now conceded that a partnership exists. However, they still seek to recover damages based on multiple pre-2006 claims. The relief sought is barred in part pursuant to the applicable statute of limitations. As such, this motion seeks to bar pre-September 16, 2006 claims in order to simplify the remaining issues before this Court, which will also greatly simplify discovery problems raised as well.

Defendants seek relief for a mish-mash of counts, variously labeled as breach of fiduciary duty, constructive trust/recoupment, conversion, breach of contract, debt, accounting and fraud. These claims will be broken into two groups.

I. The "Accounting" Claims

Pursuant to 5 V.I.C. §31(3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years. Further, as noted in *United v. Waheed Hamed*, 2013 WL 3724921 (V.I.Super. 2013) (Dunston, J.) the statute of limitations for "accounting" and "recoupment/constructive trust" is also 6 years. In reaching this conclusion, Judge Dunston held as follows:

While Plaintiff lists "accounting" and "constructive trust or recoupment" as separate counts, they are equitable remedies, and therefore not separate causes of action. Thus, they do not carry a statute of limitations apart from the independent causes of action upon which they rely. *Id.* at *2 (footnotes omitted).

Thus, the limitations period for Defendants' myriad of similar claims is 6 years.¹ It is critical to note that claims pursuant to an accounting in a partnership dissolution are barred by the same time limits, as expressly stated in 26 V.I.C. § 75(c):

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law. (Emphasis added).²

¹ It should also be noted that 5 V.I.C. § 32(a) provides:

(a) An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in this chapter.

² This same provision has been enacted and uniformly followed in RUPA jurisdictions. See, e.g., *Baghdady v. Baghdady*, 3:05-CV-1494, 2008 WL 4630487 (D. Conn. Oct. 17, 2008) (quoting *Fike v. Ruger*, 754 A.2d 254, 264 (Del.Ch.1999), *aff'd* 752 A.2d 112 (Del.2000) and citing *TIFD v. Fruehauf*, 883 A.2d 854, 866 (Del.Ch.2004)), quoting from it as follows:

the language of the statute was adopted verbatim from § 405 of RUPA, which other states also adopted. In Delaware, one court stated with respect to this statute: "Thus, **it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because a dissolution occurs and a separate right to an accounting on dissolution arises.**" (Emphasis added.)

The final question to be addressed deals with when the statute of limitations commences on Defendants' counterclaims: when they were filed or do they date back to when Plaintiff filed his complaint. This was answered in *James v. Antilles Gas Co.*, 2000 WL 1349233 (V.I. Super. 2000) (Cabret, J.), which held that the statute of limitations governing counterclaims relates back to the time the original complaint was filed, which favors Defendants.

Thus, the statute of limitations for the damage claims asserted in Defendants' counterclaim for debt, breach of contract, conversion, breach of fiduciary duty, recoupment/constructive trust and accounting are all barred to the extent they arose prior to 6 years before the complaint was filed, which was on September 17, 2012, barring all damages based on these theories that arose before September 16, 2006.

As such, Plaintiff seeks an order barring all such damage claims based on these counts that arose before September 16, 2006.³

II. Fraud

Pursuant to 5 V.I.C. § 31(5), actions for fraud are subject to a two-year limitation period. *Montgomery v. Estate of Griffith*, 49 V.I. 255 (Super. 2008) (fraud is governed by the two-year limitations period). *Lawaetz v. Bank of Nova Scotia*, 23 V.I. 132, 653 F. Supp. 1278 (D. V.I. 1987); *Fountain Valley Corp. v. Wells*, 19 V.I. 607, 616 (D.V.I.1983).

Thus, the fraud claims asserted by Defendants are barred for any claim for damages that pre-date September 16, 2010, so that summary judgment is appropriate for this claim as well.

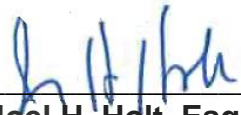
³ United's only remaining claim is for rent-an action for debt.

III. Conclusion

For the reasons set forth herein, Defendants' counterclaims should be limited to post-2006 claims, as all other claims are barred by the applicable statute of limitations.

A Proposed Order is attached.

Dated: May 13, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2014, I served a copy of the foregoing Motion by email, as agreed by the parties, on:

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