

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

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

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants/Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

---

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

vs.

**UNITED CORPORATION**, *Defendant.*

---

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

vs.

**FATHI YUSUF**, *Defendant.*

---

**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

---

**FATHI YUSUF**, *Plaintiff,*

vs.

**ESTATE OF MOHAMMAD A. HAMED**,

*Defendant.*

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

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

JURY TRIAL DEMANDED

Consolidated with

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

Consolidated with

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

Consolidated with

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

Consolidated with

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

**HAMED'S RESPONSE  
TO UNITED'S MOTION TO SUPPLEMENT SUMMARY JUDGMENT RECORD  
RE: CLAIM H-150—RECOVERY OF GRT PAID BY THE PARTNERSHIP**

## I. Introduction

Under the guise of a motion to supplement (which is really a full-blown sur-reply), United makes significant, erroneous additional arguments based on a May 4, 1994 mortgage between United d/b/a Plaza Extra and the Bank of Nova Scotia. United admits the document is not newly discovered, nor was it produced in discovery despite Hamed's repeated efforts to compel any such production.

More to the point, the document does not mention, much less support, Yusuf's arguments in the motion of an alleged agreement between him and Hamed for the Partnership to pay the gross receipt taxes (GRT) of the United Shopping Center, a Yusuf family-owned corporation, in exchange for United putting the Shopping Center up as collateral for the mortgage. Finally, United's arguments ignore Hamed's contributions to getting the Plaza Extra grocery store up and running – actual money contributed by Hamed and a promise by Hamed to work solely in the new grocery store.

As a second, totally unrelated, issue, while United does not dispute the fact that the **V.I. Supreme Court's decision, *Kennedy Funding*, is the current standard for the summary judgment motions, it asks that either the Master not apply it—or that United be allowed further brief the decision.** United states that if the

[M]aster concludes that either the Supreme Court's holding or its discussion of burdens in the summary judgment context (which Hamed also quotes) may be relevant to resolution of the parties' respective dispositive motions regarding claims Y-5 and H-150, United requests an opportunity to brief the holding in *Kennedy Funding*.

This is not a matter of discretion, this is the applicable law—there is no longer any other applicable standard. As *Kennedy Funding Inc. v. GB Props., Ltd.*, No. 2018-0014, 2020 V.I. Supreme LEXIS 13 (V.I. May 20, 2020) is current law for the appropriate Rule 56 standard, a

change in the law obviously missed by both parties, Hamed has no objection to United's request to supplement its brief in this regard.

**I. United Has No Reason to Supplement the Record**

**A. The mortgage document is not newly discovered evidence**

The mortgage document, according to United, has been available since April 9, 2020 to Hamed because it was attached to Yusuf's Opposition regarding claim H-163. Certainly, this is not newly discovered evidence.<sup>1</sup> United could have made their arguments regarding this document in their Opposition. What United is really trying to do is float an improper, sandbagging of a sur-reply under the banner of a motion to supplement the record. Moreover, even if such a supplementation of the RECORD is allowed, that would only allow the mortgage—the rhetoric in the brief should be stricken.

**B. The document supports Hamed's position that there is no written evidence of an agreement for the Partnership to pay the United Shopping Center's Gross Receipt Taxes**

The mortgage document solidly supports Hamed's statement that no agreement existed between Hamed and Yusuf for the Partnership to pay United's gross receipt taxes (GRT) on income from the United Shopping Center rents. Indeed, the mortgage is a writing about the subject that, on its face, makes *no* mention of such a GRT agreement.

It is important to note the critical admission United makes in its filing, that:

The mortgage is also referenced<sup>[2]</sup> in a 2014 declaration of Mr. Yusuf that has been submitted in connection with other motions made to the Master. See, e.g.,

---

<sup>1</sup> Hamed notes that United did not produce this document pursuant to Rule 26, during the normal discovery process or the January 2020 depositions. Accordingly, the earliest date that Hamed has seen the document is April 9, 2020, well after the close of discovery and depositions.

<sup>2</sup> Note that United states the mortgage was referenced, not that it was ever produced. It was exactly because it was referenced that it should have been produced either originally or in the many chances it had to supplement after the filing of Rule 37 letters and motions to compel.

Exhibit 12 to United Corporation's April 15, 2020 Motion for Summary Judgment re: Claim Y-7 and Y-9, Declaration of Fathi Yusuf, ¶2 (**referring to loan obtained for the benefit of the partnership** from ScotiaBank around May 1994, and secured in part by the United Shopping Center). (Emphasis added.)

This is a blatant admission of a central fact which Yusuf has always evaded—that the loans taken by United were for the PARTNERSHIP. They were not for United. They were in the name of United, but they were taken for the Partnership, paid entirely by the Partnership and thus a part of the value of those premises are assets purchased with Partnership asset.

### **C. Still no consideration for the alleged oral agreement**

United tries to argue that the mortgage magically provides consideration for the alleged GRT agreement between Yusuf and Hamed—to show that the Partnership would pay the GRTs for the United Shopping Center in return for the Shopping Center being offered as collateral for the loan to get the Plaza Extra store up and running. As identified above, no such agreement was articulated (or even mentioned) in writing in the mortgage, or in any ancillary communications or documents attendant to it. United would have the Master believe that some of the transaction was in writing while other parts weren't—a curious position which is totally at odds with the applicable law. Further, Yusuf admits that at the same time he was posting collateral, Mr. Hamed sold two grocery stores and provided the hundreds of thousands of dollars of proceeds to the Partnership for the funding of the Plaza Extra store. In the absence of any proof or written evidence, it is just as likely that he had an agreement to favor HIM. In addition, United and Yusuf admit that Mr. Hamed agreed to work solely in the Plaza Extra store. (Judge Brady's Memorandum and Opinion, Finding of Facts, ¶¶ 5-7, pp. 3-4, *Hamed v Yusuf*, SX-12-CV-370 (Apr. 25, 2013)) Both Partners, therefore, contributed to getting the Plaza Extra store operational. Fathi Yusuf's assertion that using the Shopping Center as collateral for the mortgage was his "consideration" for the alleged agreement is just that – an empty,

unsupported assertion made for the first time now, and totally unsupported by any testimony or writing.

## **II. Conclusion**

United's production now of the May 4, 1994 mortgage between United d/b/a Plaza Extra and the Bank of Nova Scotia proves Hamed's point that there is no written agreement between Yusuf and Hamed for the Partnership to pay the United Shopping Center's gross receipt taxes. The alleged agreement is not mentioned at all in the mortgage. Further, it does not prove that the mortgage was consideration for the alleged agreement. The mortgage does not say anything about United putting up the Shopping Center for collateral in exchange for Yusuf's alleged GRT agreement with Hamed. It also ignores Hamed's financial aid to get the Plaza Extra store up and running and his agreement to work solely in the new store. Why wasn't Hamed given something in addition for these two contributions to the store like Yusuf contends he deserves? Because both Hamed's contributions and Yusuf's collateral of the Shopping Center were both in service of getting the Plaza Extra store operational. Finally, the production of this mortgage document does not overcome the *Kennedy Funding* standard: "[t]o survive summary judgment the nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at \*19. We are only left with Fathi Yusuf's say so that there was a GRT agreement – which is not enough to overcome summary judgment.

**Dated:** August 1, 2020



**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

1545 18<sup>th</sup> Street NW

Suite 816

Washington, DC 20036

Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Tele: (340) 642-4422

**Joel H. Holt, Esq.**

*Counsel for Plaintiff*

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: [holtvi@aol.com](mailto:holtvi@aol.com)

Tele: (340) 773-8709

Fax: (340) 773-8670

### CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of August, 2020, I served a copy of the foregoing by email, as agreed by the parties, on:

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

**Gregory H. Hodges**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dnflaw.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



### CERTIFICATE OF WORD/PAGE COUNT

This document complies with the limitations set forth in Rule 6-1 (e).

