

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

WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
<u>Defendant.</u>)	
)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
)	
<u>Defendant.</u>)	

**UNITED CORPORATION'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

FINDINGS OF FACT

1. The United Shopping Center is owned by United Corporation, a corporation in which Fathi Yusuf is the principal shareholder. Tr. Exhibit D, ¶ 1. The shopping center is comprised by more than 30 retail store spaces that are referred to as “bays” and office space on the second floor of one of the buildings referred to as “suits.” Plaintiff’s Hearing Exhibit 7. Exhibit 7 depicts the bays as they existed in 1994, when Plaza Extra East was reopened following a fire that damaged Bay 1 and other bays. Tr. 16. The largest of the bays is Bay 1, at 69,000 square feet, and that is where Plaza Extra has operated from since the store opened. *See* Exhibit 3, ¶ 1; Tr. 17, 70.

2. United Shopping Center is a retail shopping center, not a warehouse facility, and United’s intention was to have its bays rented to and used by retail tenants. Tr. 19, lines 8-11; 109, lines 6-9. As Fathi Yusuf testified, “This building [the United Shopping Center] is not designed for warehousing.” Tr. 71, lines 23-24. The use of any bays for warehousing was not in the economic interests of the shopping center and its tenants because it diminishes customer traffic at the shopping center. Tr. 19, line 13. Using bays for warehousing “chases” away customers and “hurts” tenants; and it reduces the rental value of bays for retail use and ultimately leads to a loss of income for United. Tr. 19, lines 11-12; 22, lines 8-9; 71, line 25; 72, lines 1-3.

3. At the same time, the warehousing needs of a supermarket in the Virgin Islands are much greater than those of a mainland supermarket. This is so because merchandise is delivered daily to mainland supermarkets, while supermarkets in the Virgin Islands receive shipments of merchandise once or at most twice per week. Tr. 20, 23.

4. Because it was not in United’s economic interests or those of its tenants to use any of United’s bays for warehousing of Plaza Extra inventory, Mr. Yusuf’s general preference,

as owner of United, was not to use any of United's bays for warehousing Plaza Extra merchandise, and instead to rent warehouse space off site. Tr., 22, lines 1-3; 24, lines 10-12; 38, lines 14-16.

5. Notwithstanding Mr. Yusuf's general preferences, although Bays 5 and 8 were rented out to third party tenants for some periods, in other periods Plaza Extra used them for the purpose of storing Plaza Extra supermarket inventory. Exhibit 3, ¶26, and Exhibit appended to Exhibit 3.

6. Fathi Yusuf, on behalf of United, was ultimately willing to use the two bays for warehousing Plaza Extra inventory when they were otherwise not rented to third parties, and was even willing to continue that use if tenants became available, during times when the "[grocery] business was booming" and Plaza Extra had above-normal inventory needs. Tr. 108, lines 24-25 and 109, lines 1-4. But he was only willing to permit Plaza Extra to warehouse inventory in those bays on condition that Hamed (as an equal partner in the Plaza Extra partnership) pay a reasonable rent for its use of those bays. Tr. 109, lines 22-24; see also Tr. 37, lines 23-25. United owns the shopping center, it did not offer use of any of its bays free of charge to anybody, and, as Fathi Yusuf emphasized in his testimony, there was no reason for the partnership or Hamed to get use of United's property free of charge. Tr. 25, lines 18-24; 27, lines 3-4; 42, line 25, and 43, line 1; 69, lines 11-14; 73, lines 15-18; 93, lines 11-12; 96, lines 12-14.

7. Furthermore, fundamental to Hamed's claim that a partnership existed was the fact that the partnership had to pay rent to United for the use of Bay 1 to operate the grocery store business. The fact of payment of rent, Hamed argued, demonstrated the separation of United from the partnership and the landlord/tenant relationship between the two. Although the partnership did not operate formally as a separate entity, utilizing, instead, the United corporate

structure, the requirement to pay rent to United was a cornerstone issue in Hamed's contention that an oral partnership existed and that Yusuf had always intended for the partnership to pay rent for the space it utilized to operate the grocery store business.

8. While United permitted Plaza Extra to rent Bays 5 and 8 for certain periods, it had the right to cause Plaza Extra to vacate those bays any time it found a tenant to whom it wanted to lease either of the two bays. Tr. 37, lines 14-20; 38, lines 7-12; 73, lines 1-5; 109, lines 17-20, 153, lines 8-15.

9. Plaza Extra-East reopened in May 1994 following a 1992 fire at the shopping center that required, among other things, the rebuilding of Bay 1. Tr. 14, lines 17-25 and 15, lines 1-9. Bay 8 was not being rented then because its tenant, Ali Hardware, had been evicted around the time of the 1992 fire. Trial Exhibit E, p. 4. lines 8-10. Tr. 14, lines 17-25 and 15, lines 1-9; 20, lines 8-10. Notwithstanding Fathi Yusuf's general preference against use of United's bays for warehousing, Plaza Extra was, as Mike Yusuf testified, "tight on space" for warehousing inventory when the store reopened, and Mr. Yusuf determined that Plaza Extra should utilize Bay 8 for warehousing. Tr. 117, lines 9-11; 20, lines 8-10; Trial Exhibit E, p. 4.

10. Fathi Yusuf discussed the use of Bay 8 by Plaza Extra East with Waleed Hamed and told him that Plaza Extra would have to pay rent for the use of that bay for a reasonable amount based on what other tenants were paying for space at United Shopping Center.¹ See Trial Exhibit E, p. 4; Tr. 20, lines 16-25; 93, lines 5-9.

¹Hamed attempted to show in his cross-examination of Mike Yusuf that Bay 8 was not ready to be rented to third party tenants when Plaza Extra began using it, and would have required some additional time and work to make it available for rental. Mike Yusuf's answers to that line of questioning demonstrate that to the extent any additional work needed to be done to make Bay 8 rentable when Plaza Extra began using it in May 1994, it was minor. Tr. 136, lines 22-28; 137, lines 1-25; 138, lines 1-25; 139, lines 1-13.

11. The circumstances under which Bay 5 first began being used by Plaza Extra for warehousing Plaza Extra inventory are different, because that use began without Fathi Yusuf's knowledge, and it is something he would not have approved. Tr. 72, lines 18-19. Fathi Yusuf was working in St. Thomas at the Plaza Extra Tutu Park store (which had opened in October 1993) when Plaza Extra East re-opened in May 1994. Tr. 15, lines 10-15; Trial Exhibit D, p. 2, ¶ 3. Unbeknownst to him, Waleed Hamed, who was then managing Plaza Extra East, and Mike Yusuf decided "right after" the store was reopened to knock out a portion of the cinder block wall that separated Bay 1 and Bay 5, so that Bay 5 could be used for warehousing inventory and a forklift could be driven into and out of that bay to move merchandise into the supermarket. Tr. 118, lines 12-25, to 119, lines 1-21; Tr. 120, lines 23-25, and 121, lines 1-5.

12. Before Waleed Hamed and Mike Yusuf broke through the wall, thereby making Bay 5 unsuitable for rental to any third party tenant, it was available for rental to such tenants. Tr. 120, lines 8-12.

13. When Mr. Yusuf returned from St. Thomas to St. Croix, and saw that the wall had been broken through, he was angry at what had been done and would not have approved it because of the impact it had on other tenants at the shopping center. Tr. 22, lines 5-9; 24, lines 16-19; 120, lines 13-22. Fathi Yusuf testified that he was upset with Waleed Hamed, and told him that Bay 5 "was for rent ... not for the warehouse." Tr. 69, lines 1-4. Fathi Yusuf testified that he then told Waleed, "You have to pay rent [for Bay 5]," and that he responded, "Yes. Sure, we'll pay rent." Tr. 69, lines 7-10. Mr. Yusuf also told Waleed Hamed that eventually he would have to get the wall restored to its original rentable condition, and he agreed to do that, and in fact did close the wall at his own expense some years later. Tr. 69, lines 9-10; Tr. 74, lines 11-16.

14. Mike Yusuf confirmed in his trial testimony that his father was indeed angry about the portion of Bay 5 wall having been removed. Mike testified that his father told Waleed after seeing the opening in the wall that he did not want to “give up a good store for a warehouse,” and also that Waleed was going to “have to pay us ... rent...” Tr. 142, lines 5-8. Mike testified that from that point he was aware that Plaza Extra would have to pay rent for Bay 5 or 8. Tr. 142, lines 2-8.

15. Waleed Hamed admitted in cross-examination that he did not consult with Fathi Yusuf before breaking the wall. Tr. 164, lines 10-12. When asked on direct whether he talked to Fathi about the hole in the wall afterwards, he answered, “Absolutely not.” Tr. 158, lines 22-25; 159, lines 1-2, and he gave the same answer when asked if he discussed paying rent for Bay 5 then. Tr. 159, lines 3-5. Waleed Hamed also denied that Fathi Yusuf was angry about the breaking the wall of a retail space. Tr. 164, lines 18-21. However, his trial testimony was different from his earlier deposition testimony on the topic. In his deposition, Waleed Hamed acknowledged that he and Fathi might have had conversations about his having broken the hole in the Bay 5 wall, and he even went so far as to say that he would not dispute Fathi Yusuf if Yusuf testified that he was angry and expressed his displeasure at what had been done:

Q. And you never had a discussion with Mr. Yusuf about breaking the wall, isn't that correct?

A. I'm not too sure if that's quite clear, but maybe at one time or another. I mean, it's been so long, I don't really recall if we did or we didn't.

Q. Do you recall Mr. Yusuf being upset that the wall had been broken through?

A. Don't recall that.

Q. But you wouldn't dispute it if Mr. Yusuf said that he was upset and discussed it with you?

A. Well, if he said so. I don't really recall that.

See United’s February 25, 2019 Motion for Summary Judgment as to Claims Y-2 and Y-4, p. 4, n.2 (quoting Waleed Hamed testimony and citing to transcript of his deposition attached to the Motion as Exhibit 5, at page 11, line 25 to page 12, line 10).

16. Mr. Yusuf, for his part, is “one hundred percent” certain that he and Waleed Hamed agreed that rent would be due for Bays 5 and 8, and has “no doubt” about that. Tr. 56, lines 3-8.

17. With respect to Bay 5, the Master finds, after observing the demeanor of all three witnesses and evaluating their testimony regarding the breaking of the wall and what transpired when Fathi Yusuf learned about it, including Waleed Hamed’s inconsistent deposition testimony, finds that the testimony of Fathi and Mike Yusuf regarding the agreement to pay rent for Bay 5 that took place then are credible, and the testimony of Waleed Hamed that there were no discussions then about Bay 5 rent is not credible.

18. Attorney Holt asked Waleed Hamed the following leading question on direct examination: “Prior to receiving [Attorney DeWood’s May 2013 letter], had Fathi Yusuf or anyone else on behalf of the landlord ever suggested to you or your father that the store expected to be paying rent [for Bays 5 and 8]?” Tr. 162, lines 6-12. He answered “No, sir, never.” Tr. 162, line 13. The Master has concluded in finding 17 above that that Waleed Hamed’s denial of an agreement to pay rent is not credible as to Bay 5, and finds that his denial of an agreement as to Bay 8 is not credible either, for other reasons described below.

19. Waleed’s denial of any agreement to pay rent for either bay is not credible because: 1) he admitted that the partnership benefitted from its use of both bays (*see* Finding 21 below), 2) he knew that United Shopping center was a retail shopping center and that all of its

bays other than Bay 1 were designed for rental to third party tenants,² and 3) and he knew that Fathi Yusuf and United did not give away space to its tenants free of charge and in fact charged Plaza Extra rent for Bay 1 for every day that they occupied it over a period of some 30 years. In addition, his credibility on the subject of agreements with Fathi Yusuf to pay rent to United was seriously undermined by his denials, beginning on May 22, 2013 that there was any agreement to pay rent to United for Bay 1 for the 1994 to 2004 time period. Judge Brady rejected those denials regarding Bay 1 in his April 2015 opinion declaring rent due to United for the 1994 to 2004 period. *See Hamed v. Yusuf*, 2015 Westlaw 1389453, p. *5 (Super. Ct. 2015). In that opinion, Judge Brady noted that it was “on May 22, 2013, when Hamed first disputed the validity of the 1994-2004 rent debt.” *Id.* at p. *5. Judge Brady rejected “Plaintiff’s denial that the parties had an agreement regarding [rent for that period],” finding that Mohammad and Waleed Hamed had in fact acknowledged well before May 2013 that the partnership owed rent for Bay 1 for those years.³

20. Moreover, the fact of the partnership being required to pay rent to United was the cornerstone issue for Hamed’s contention that a “partnership” existed – an arrangement which otherwise had no written support and by all outward appearances did not exist. Hamed attempts

²Waleed had to know, for example, that (as Mike Yusuf testified) Bay 8 was previously rented to Ali Hardware before Plaza Extra began using it for warehousing inventory in 1994. Tr. 77, lines 22-25; 78, line 1.

³Judge Brady used the May 22, 2013 date as the first time Hamed denied owing rent, because that is the date of Attorney Holt’s letter (Trial Exhibit J) responding to Attorney DeWood’s letter (Trial Exhibit B) requesting rent payments for Bays 1, 5 and 8 for the 1994 to 2004 time period. *See also* Tr. 177, lines 18-25. Attorney Holt’s letter asserted, *inter alia*, that 1) that “[t]here was never any understanding that rent would be paid for this time period,” for bay 1, meaning the “time period between 1994 and 2004”; and 2) that there were no agreements to pay rent for bays 5 and 8 either. *See* Trial Exhibit J. Assertion 1 was mistaken, as demonstrated by Judge Brady’s April 27, 2015 ruling ordering the payment of rent for the 1994 to 2004 time period. The evidence adduced at the February 4 hearing shows that assertion 2 is likewise mistaken.

to use the partnership's obligation to pay rent to United only when it suits him – he has argued in favor of the obligation to pay rent to demonstrate that a partnership to operate the supermarket exists separate from United, but then has argued that there is no obligation of the partnership to pay rent for Bay 1 for 1994 to 2004 (a position Judge Brady found was not credible when he ordered millions to be paid by the partnership for that period). Now, Hamed again argues that there is no obligation to pay rent for Bays 5 and 8 at all – a position which the Master, likewise, finds is not credible.

21. Waleed Hamed acknowledged in cross-examination that Plaza Extra's use of Bays 5 and 8 for warehousing inventory benefited the partnership. Tr. 173, lines 24-25; 173, lines 1-9. On re-direct, in an attempt to qualify that admission, Waleed Hamed answered affirmatively when asked, "The benefit would only be equal to what warehouse space costs?" Tr. 179, lines 2-4.

22. Waleed Hamed's caveat to his admission during cross-examination is entitled to little weight for at least three reasons. First, as Mike Yusuf testified, even if one could find warehouses off-site at a lower rate, warehousing at Bays 5 and 8 created cost savings over off-site warehousing, because the merchandise "is secured here, the forklift is here, the receiving person is here, the manpower is here," and "inventory control" at those bays was superior to any off-site location, and there is no cost to transport it by truck to the supermarket. Tr. 141, lines 1-7. Second, the fact that United allowed rent to accrue for 10-year blocks of time created a cash flow advantage that Plaza Extra was very unlikely to find with any other landlord of warehouse space. And third, Riverdale, the entity to which Bay 8 was leased (and whose rental rate was used to determine the rate charged to Plaza Extra for its use of that bay) was, in contrast to most of United's tenants, actually a wholesale tenant. Riverdale rented Bay 8 to warehouse inventory

for its retail grocery store that was operated elsewhere. Tr. 76, lines 2-16; Trial Exhibit E, Supplemental Responses to Interrogatories, p. 5.⁴ As such, the rental rate used to calculate the rate charged to the partnership for Bay 8 is based on an actual rate charged for a wholesale use of that space.

23. Waleed Hamed was also asked in re-direct examination the leading question, “And had you known that you were being charged for [Bays 5 and 8], you had other storage available, correct?” Tr. 179, lines 5-7. He responded “Yes” to that question, but he offered no explanation of where that “other storage” was, or how much it would have cost. Tr. 179, line 8. Waleed testified that “if I had known I was gonna be charged or we were gonna be charged such amount, I definitely would have found the ways and means of not utilizing the space.” Tr. 179, lines 10-13. Without any evidence regarding the location of that other warehouse space and its rental rate, as well as the obvious additional costs of managing an off-site location and transporting merchandise from it to the Plaza Extra store -- and how that total cost compares to the amount being charged by United for bays 5 and 8 -- Waleed Hamed’s testimony is too imprecise and speculative to be of any use in resolving the Y-2 and Y-4 claims.⁵

24. In early 2012, Waleed Hamed and Fathi Yusuf agreed to the rent calculation prepared by Yusuf for Bay 1, the bay used by Plaza Extra East for the period May 4, 2004 to December 31, 2011. Tr. 58, lines 8-24. The calculation of the total amount due, \$5,408,806.74,

⁴Mike Yusuf also testified that the second floor of Plaza Extra East is unsuitable for inventory storage because that floor is not built to accommodate the heavy weight of grocery store inventory. Tr. 147-148. Waleed Hamed’s testimony that the upstairs, which is currently used for administrative offices for Plaza Extra, could have been used for warehousing inventory, does not take this fact into account, and is entitled to no weight by the Master. Tr. 160, lines 16-24.

⁵While Fathi Yusuf conceded that warehouse space generally costs less than retail space, the exact differential depends heavily on “location, location, location.” Tr. 69, lines 10-13.

is set forth in Trial Exhibit 3. Tr. 30, lines 2-24, Tr. 58, line 15. A check for that exact amount was issued by Plaza Extra and signed by Waleed Hamed and Fathi Yusuf's son, Yusuf Yusuf (with his father's authorization to sign it). Trial Exhibit 4; Tr. 34, lines 9-25, and 34, lines 1-6.

25. Waleed Hamed's contention that the rent payment for Bay 1 actually includes rent due for Bays 5 and 8 is unsupported by the rent calculation itself, which makes no reference to Bays 5 and 8 or to warehouses. *See* Trial Exhibit 3. The rent calculation prepared by Yusuf is detailed and triggers off of the value received at the St. Thomas – Tutu Park location. Nothing in the detailed calculation, which carries the percentage to many decimal points, references or intimates any indication that Bay 5 and 8 rent (for different periods of time) are somehow part of this calculation. *Id.* In addition, Judge Brady's April 27, 2015 order directing the partnership to pay rent to United for the 1994 to 2004 time period relies on the February 2012 payment of rent for the subsequent 2004 to 2011 period, and it makes clear that this later rent payment and the one he ordered only relate to Bay 1. *See* Hamed v. Yusuf, 2015 WL 13839453, pp. *1 and n. 1, *5 (discussing rent obligations in both periods and making clear in footnote 1 that his opinion addresses only Bay 1 rent, and not Bay 5 and 8 rent).

26. In addition, Waleed Hamed admitted that the \$5.4 million dollar rent payment made in February 2012 was a "partial" payment and only covered the period of time from May 4, 2004 to December 31, 2011. Tr. 107, lines 22-25; 171, lines 1-2. United's entire claim for Bay 5 rent, precedes 2004 and therefore, could not be part of that check or tabulation. Likewise, the portion of United's claim for Bay 8 rent which covers the May 1, 1994 to September 30, 2002 period predates 2004. Thus, Hamed's claim that the rent tabulation and \$5.4 million payment for the May 4, 2004 to December 31, 2011 period also covered bays 5 and 8 is belied by the fact that the time periods for which United is seeking rent for Bay 5 and the first period for Bay 8 precede

2004. Tr. 171, lines 3-16. The payment of rent in February 2012 could not possibly have covered those rent amounts.

27. Fathi Yusuf felt no particular need to discuss agreements he made with the Hamed's regarding rent for Bays 1, 5 and 8 with his own bookkeepers and in-house accounting personnel (all of whom worked at Plaza Extra Tutu Park in St. Thomas) because both the shopping center and the supermarket were at that time under the aegis of United for accounting purposes, so that transactions between Plaza Extra and the shopping center were intra-company transactions, between separate arms of a single corporate entity. Mr. Yusuf viewed his agreement with Mohammed Hamed then as a profit-sharing agreement, not a legal partnership, and what was important to him was ensuring that both the revenues earned by the Plaza Extra supermarkets as well as the costs were split 50-50. Tr. 52, lines 21-25, and 53, lines 1-7.

28. The internal United accounting record attached to Trial Exhibit I at bates page HAMD262211 shows the \$5,408,806.74 rent payment Bay 1 for the 2004 to 2011 time period (the amount paid by the check attached as Trial Exhibit 4) on a line with "unit 8," but with no reference at all to "unit 1." Whoever prepared these documents was not a witness at the hearing, and he or she has not been deposed in this case to explain this cryptic entry. Insofar as the accountant means to assert that the \$5,408,806.74 was issued to pay rent due for Bay 8, rather than Bay 1, that entry is obviously mistaken. There is nothing in this document to support Hamed's contention that the \$5,408,806.74 payment was intended to cover rents owed for Bays 1, 5 and 8. Indeed, this entry is contrary to Waleed Hamed's own contention that Bays 5 and 8 were being provided free of charge. Waleed Hamed testified that he and Mr. Yusuf were only discussing Bay 1 rent when the \$5,408,806.74 amount was derived and paid. Hence, the

accounting of that payment which was clearly for Bay 1 is not reflected on this document, because it does not even reference Bay 1.

29. The internal United accounting record attached to Trial Exhibit F at bates page number FBIX237825 is dated July 27, 2001, and has the notation “plaza extra-Vacant” under the “last name” and “first name” columns for Bays 5 and 8. Whoever prepared these documents was not a witness at the hearing, and he or she has not been deposed in this case to explain what “plaza extra-Vacant: means, or why Bay 1 is not shown on this ledger, or what the dollar amounts in the “rent” column mean for Bays 5 and 8. Another internal accounting document attached to Trial Exhibit F at bates page number HAMD664274 shows a price per square foot for Bay 5 at \$7.01 and a price per square foot for Bay 8 at \$5.50 in the “\$/Sq. Ft.” column, but shows nothing in the A/R column for Bays 5 and 8. While Hamed apparently infers that this absence of dollar figures in the A/R column means that Bays 5 and 8 were being provided rent-free to Plaza Extra, this is just speculation on his part. There was clearly a very large seven figure account receivable for Bay 1 at this time, because the rent for the 1994 to 2004 rental period had not been paid as of July 2001 (and was only paid after Judge Brady issued his April 27, 2015 order directing that it be paid). Yet this report does not show an accounts receivable for Bay 1. *See* Tr. 82, lines 22-25, and 83, lines 1-9. Whoever prepared this document has not been deposed or called as a witness to explain what, if anything, he or she knew about amounts owed by Plaza Extra for use of Bays 1, 5, and 8 at this time, and what, if anything, was being conveyed about those amounts owed in this document.

30. Bay 5 was utilized by Plaza Extra-East from May 1, 1994 (upon reopening after the fire) until July 31, 2001 for inventory (7 years and 2 months). *See* Trial Exhibit 2, Yusuf Declaration, ¶ 22.

31. Waleed Hamed testified in direct examination that the hole in the Bay 5 wall was created “a year, two years, maybe three years” after Plaza Extra reopened, which would mean that the supermarket began warehousing inventory there one to three years after May 1994. Tr. 158, lines 6-17. That testimony was impeached by Hamed’s own deposition testimony, in which he acknowledged that, even though his own memory of when the wall was broken was hazy, if Mike Yusuf testified that Plaza Extra began utilizing Bay 5 in the Spring of 1994, he could not dispute that. Tr.163, lines 4-25 and 164, lines 1-6.

32. Plaza Extra used Bay 5 for warehousing merchandise until it entered a 10-year lease with David Zahriyeh (doing business as Diamond Girl) for those premises. Trial Exhibit 11, Trial Exhibit E, p. 4. Diamond Girl renewed that lease in 2011. The rental rate in the lease was \$31,250 per year, which works out to \$10/square foot per year for the 3,125 square foot Bay 5. Trial Exhibit 11, p. 6, ¶ 10.

33. The rate of \$12/square foot for Bay 5 for the 7 year, 2 month period in which Plaza Extra used that space which United is seeking is a reasonable rent.⁶ This works out to \$271,875 for Bay 5.⁷ Tr. 46, lines 6-25; 47, lines 1-25; and 48, lines 1-11. *See also* Trial Exhibit

⁶Since Diamond Girl was also responsible for paying WAPA and other utility bills *see* Trial Exhibit 11, p. 9, ¶ 16, it is appropriate to adjust Diamond Girl’s \$10/square foot per year rate upward modestly to arrive at a reasonable rent.

⁷As noted above, Hamed’s argument that the only reasonable rent for Bay 5 is the wholesale rent that Plaza Extra would have paid for off-site warehouse space is unpersuasive, because off-site warehousing entails other obvious costs that were not incurred by the use of Bay 5, such as the costs of having forklifts at an off-site facility and transporting merchandise by truck to the Plaza Extra East supermarket. In addition, an off-site landlord would not have allowed rent to accrue for years before requiring payment, an accommodation that Fathi Yusuf gave Plaza Extra to help the supermarket business grow. *See* Findings 21 and 22, above; Trial Exhibit 2, p. 2, ¶ 3. If Hamed’s argument somehow had merit, and Plaza Extra should only be charged rent for Bay 5 in the amount it would have paid for comparable wholesale space, the best evidence of that would be the rate paid by Riverdale for Bay 8 (approximately \$6.15 per sq. ft. per year), because Riverdale was a wholesaler, not a retailer. Tr. 76, lines 2-16; Trial Exhibit E, Supplemental Responses to Interrogatories, p. 5. *See* Finding 22 and Conclusion 36, below.

E, Supplemental Responses to Interrogatories, p. 4; Trial Exhibit 2, p. 9, ¶ 22 (showing Bay 5 rent calculation); Chronology of Rents, appended to Trial Exhibit 2 as Exhibit G.

34. Plaza Extra used Bay 8 for warehousing from May 1, 1994, when the Plaza Extra East store re-opened, to September 30, 2002, when United leased Bay 8 to Mahmud Idheilal (doing business as Riverdale).⁸ Trial Exhibit 12; Tr. 48, lines 18-24; 50, lines 17-22; Trial Exhibit E, Supplemental Responses to Interrogatories, p. 5, Trial Exhibit 2, p. 9, ¶ 23. The term of the Riverdale lease was 63 months, and the rent was initially \$31,260, and increased to \$37,500 on January 1, 2004. Trial Exhibit 12, p. 5, ¶ 6 and p. 6, ¶ 10. \$37,500 for the 6,125 square feet space of Bay 8 works out to \$6.00/sq. foot per year.

35. When the Riverdale lease ended, in March 2008, Plaza Extra again began utilizing Bay 8 to warehouse inventory, and it continued doing so through May 30, 2013. Tr. 50, lines 23-25, and 51, line 1; Trial Exhibit 2, p. 9, ¶ 24, Trial Exhibit E, p. 5.

36. United is seeking rent from the partnership for Bay 8 for two periods of time at the rate of \$6.15/sq. foot per year. Rent at the rate of \$6.15/sq. foot annually for the first period, May 1, 1994 to September 30, 2002 (8 years, five months) comes to \$323,515.63. Rent at this same rate for the second period, April 8, 2008 to May 30, 2013 (5 years, 2 months) comes to \$198,593.44. Tr. 49, lines 20-25; 51, lines 16-25, and 52, lines 1-4; Trial Exhibit 2, p. 9, ¶ 23 and pp. 9-10, ¶ 24. *See also* Trial Exhibit E, Supplemental Responses to Interrogatories, pp. 4-5; Chronology of Rents, appended to Trial Exhibit 2 as Exhibit G. The total rent sought by United for the partnership's use of Bay 8 is \$522,109.38.

⁸Mike Yusuf testified that for any periods in which Plaza Extra was using Bays 5 or 8 for warehousing, that use was continuous throughout the period, and not on and off. Tr. 121, lines 23-25, and 122, lines 1-14. Waleed Hamed agreed in cross-examination that Plaza Extra's use was continuous during those periods. Tr. 165, lines 23-25, and 166, line 1.

CONCLUSIONS OF LAW

1. The Master concludes that United has proven by a preponderance of the evidence that Waleed Hamed entered an oral contract under which the Plaza Extra partnership would pay reasonable rent to United for its use of Bays 5 and 8 for warehousing merchandise.

2. The Master concludes that the statute of frauds defense, to the extent that Hamed is still relying on it, is not applicable, because the evidence showed that the contract for renting Bays 5 and 8 was terminable at the will of United at any time. *See* Finding 8, above. The Virgin Islands Supreme Court has held, in this very case, that because an the at will partnership agreement between Yusuf and Hamed could be terminated before the expiration of one year, the statute of frauds does not apply to the agreement.⁹ *See Yusuf v. Hamed*, 59 V.I. 841, 852 (V.I. 2013).

3. The Master also concludes that, to the extent that Hamed is still relying on the statute of limitations defense, that defense has no merit because of the doctrine of equitable estoppel, which the Master has applied to overcome the statute of limitations defense in his orders of last year deciding dispositive motions regarding claims Y-5, Y-7, Y-8 and Y-9, and which is equally applicable here.¹⁰ *See* Master's October 2, 2020 Order Granting United Summary Judgment on Claims Y-7 and Y-9, pp. 20, 22-29; Master's November 9, 2020 Order Granting United

⁹In opening remarks at the February 4 evidentiary hearing, Attorney Holt noted that he had raised a statute of frauds defense to the rent claims for Bay 5 and 8 which was still an open issue. He added that "if, in fact, the testimony is that these tenancies could have been stopped at any time, meaning they could have been stopped within one year, then I will probably be withdrawing that legal defense at the end of this." Tr. 12, lines 5-12. The undisputed testimony was that the oral leases for Bays 5 and 8 could be ended at any time, which means that the statute of frauds does not apply. *See* Finding 8, above.

¹⁰Attorney Holt stated at the evidentiary hearing that because the Master has recently rejected the limitations argument in the context of other claims raised by United, he would not be arguing that United claims for rent for Bays 5 and 8 are time-barred, though he was preserving that issue. Tr. 11, lines 13-25, and 12, lines 1-4.

Partial Summary Judgment on Claim Y-8, pp. 22-30; Master's December 9, 2020 Order Granting United Summary Judgment on Claim Y-5, pp. 19, 21-29.

4. The Master concludes that the rental rates being sought by United for Bays 5 and 8 are reasonable because they are similar in amounts to the rents charged to Riverdale and Diamond Girl for their use of Bays 8 and 5 during the time periods immediately following their use, respectively.

5. The elements of a claim for unjust enrichment in the Virgin Islands are: “(1) that the defendant was enriched, (2) that such enrichment was at the plaintiff's expense, (3) that the defendant had appreciation or knowledge of the benefit, and (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff.” *Walters v. Walters*, 60 V.I. 768, 779-780 (V.I. 2014).

6. Even if United had not proved by a preponderance the existence of an oral contract obligating the partnership to pay a reasonable rent for Plaza Extra East's use of Bays 5 and 8 for warehousing merchandise, or even if a contract was formed but is unenforceable, United has proven the elements of unjust enrichment that would entitle it to the same recovery of reasonable rent. United has proven that the partnership benefitted from the use of those bays (and indeed Hamed conceded that benefit), the partnership was aware of the benefit, and equity and good conscience require that the partnership pay the reasonable rental value of the space used by Plaza Extra.

6. United is entitled to a recovery in the amount of \$271,875 against the partnership for reasonable rent for Plaza Extra East's use of Bay 5.

7. United is entitled to a recovery in the amount of \$522,109.38 against the partnership for Plaza Extra East's use of Bay 8.

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CERTIFICATE OF SERVICE

It is hereby certified that on this 23rd day of February, 2021, I caused the foregoing a true and exact copy of the foregoing **UNITED CORPORATION'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be served upon the following via Case Anywhere docketing system:

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