

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,)SX-2012-CV-370
)
-vs-)
)Pages 1-192
FATHI YUSUF and UNITED CORPORATION)
)
Defendants and Counterclaimants.)Full Caption
)Continued On
-----)Next Page

TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE THE HONORABLE EDGAR D. ROSS, RETIRED

DATE: Thursday, February 4, 2021

LOCATION: ZOOM VIDEOCONFERENCING

REPORTED BY: N. Antoinette Cérge
CSR-California/RPR-National
Notary Public - St. Thomas/St. John
P.O. Box 303426
St. Thomas, U.S. Virgin Islands 00803
caribbeanreporting@yahoo.com
340.771.6008

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,) SX-2012-CV-370
))
vs.))
))
FATHI YUSUF and UNITED CORPORATION)
Defendants and Counterclaimants.)
))
vs.))
))
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED,)
and PLESSEN ENTERPRISES, INC.,)
))
Counterclaim Defendants.)
-----)
WALLED HAMED, as the Executor of)
the Estate of MOHAMMAD HAMED,)
))
Plaintiff,) SX-2014-CV-287
))
vs.))
))
UNITED CORPORATION, Defendant.)
-----)
WALEED HAMED, as the Executor of)
Estate of MOHAMMAD HAMED, Plaintiff) SX-2014-CV-278
))
vs.))
))
FATHI YUSUF, Defendant)
-----)
FATHI YUSUF, Plaintiff) ST-17-CV-384
))
vs.))
))

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Fathi Yusuf	13	60	105	
Maher Yusuf	116	128	152	
Waleed Hamed	156	163	178	181

DEFENDANT YUSUF EXHIBITS

NUMBER	DESCRIPTION	MARKED	IN EV.
1	Hearing Feb. 4, 2021 (not attached)	110	44
2	Declaration Fathi Yusuf	43	31
3	United Sales Chart	30	31
4	Copy of Check #64866	34	36
5	5-17-13 letter to Holt from DeWood	40	40
7	USP schematic	16	16
11	Lease Contract 9-3-01	46	47
12	Lease Contract 10-1-02	50	50

PLAINTIFF HAMED EXHIBITS

NUMBER	DESCRIPTION	MARKED	ALL IN EVI.
A	USP schematic	60	104
B	5-22-13 letter from Holt to DeWood	62	
C	Answer/Counterclaim	63	
D	Declaration, Fathi Yusuf	67	
E	Supplemental Responses to Hamed's Discovery	78	

↑

5

PLAINTIFF HAMED EXHIBITS - CONTINUED

NUMBER	DESCRIPTION	MARKED	IN EVI.
F	8-27-01 letter from Luff to Yusuf (not attached)	79	
G	Declaration of Kimberly Japinga (not attached)	83	
H	Plaza Extra Tutu Sales	85	
I	Declaration of Carl Hartmann (not attached)	85	
J	5-22-13 letter from Holt to DeWood	97	
K	4-25-13 Judge Brady order (not attached)	101	
O	2019 Deposition, F. Yusuf (not attached)	91	
12	Lease Contract 10-1-02	75	

1 ST. THOMAS, VIRGIN ISLANDS; THURSDAY, FEBRUARY 4, 2021

2 -0-

3 THE COURT: This is the time set for the
4 hearing in Claim Number Y-2, in the case of Hamed
5 versus Yusuf, Civil Number SX-12-CV-317.

6 Are the parties ready?

7 MR. HOLT: Yes, Your Honor.

8 THE COURT: Defendant ready?

9 MS. PERRELL: Yes, Your Honor, we are.

10 THE COURT REPORTER: Is the Defendant
11 ready?

12 MR. HOLT: Yes, Your Honor.

13 We've just done that backwards. The
14 Plaintiff is ready.

15 THE COURT: That's right. Thank you.

16 All right. Both parties are ready?

17 MR. HOLT: Yes, sir.

18 MS. PERRELL: Yes, sir.

19 THE COURT: Are there any other party
20 represented who is present although not related to
21 the present hearing?

22 MS. PERRELL: Your Honor, Attorney
23 Charlotte Perrell on behalf of United. I would like
24 to just introduce the folks that I have with me
25 here, with me, via Zoom, on this hearing.

↑

7

1 In St. Croix, at Plaza Extra East, we have
2 Mike Yusuf and Mr. Fathi Yusuf, and then also a lawyer
3 from our office, Stefan Herpel, who is -- yes, there he
4 is in the screen.

5 And then I also have, just sitting in today,
6 is another attorney from our office; her name is
7 Su-Layne Walker.

8 Su-Layne, if you can do a quick -- there we
9 go.

10 Su-Layne is a new lawyer -- not a new lawyer,

11 but a new lower with our office. She's had a lot of
12 appellate experience with the V.I. Supreme Court and
13 has done work with the Department of Justice, and is
14 now with our office. And we asked her just to simply
15 sit in today.

16 Don't worry, Mr. Yusuf, no charge. She is
17 just sitting in today to observe the hearing. And I
18 mentioned that after she's introduced, she's going to
19 go ahead and turn off her screen. Again, she's just
20 viewing to participate and watch the proceedings.

21 MR. HOLT: Your Honor, on behalf of the
22 Plaintiff -- first of all, Attorney Walker, welcome
23 to the law firm that you're with.

24 I have with me someone who's been here
25 forever, Carl Hartmann, as well as Kim Japinga. And

8

1 again, they will be probably turning off their video --
2 I'm not sure -- once we get started.

3 I have with me Wally Hamed, and I will be
4 linking in Willie Hamed later on this morning for some
5 very brief testimony from him.

6 THE COURT: Very well.

7 Does the Defendant want to make any opening
8 statement?

9 MS. PERRELL: Your Honor, we are prepared
10 to make an opening statement, but I know that this
11 particular matter has been briefed, rebriefed,
12 briefed again, and Your Honor has made a couple of
13 rulings on this matter as well, so I don't want to
14 belabor the point.

15 If you would like for me to go into some of
16 the matters, I'm happy to do that. I'll ask for your
17 direction on that as to how extensive or limited you'd
18 like for us to be.

19 THE COURT: Well, you can wait until your
20 closing and incorporate all the new arguments you
21 may have.

22 MS. PERRELL: Okay. I'll make -- then
23 what I'd like to go ahead and do is limit our --
24 like a quick statement here to show that we're gonna
25 have some limited testimony so as to try to focus

↑

9

1 this matter.

2 Briefly, Your Honor, and everyone, given the
3 fact that this matter has been briefed a number of
4 times, we understand that really, the only open issues
5 to be determined by the Court today pursuant to
6 Master Ross's decisions will ultimately be to determine

7 whether or not there was an agreement between the
8 parties as to the partnership to pay for rent to United
9 for Bays 5 and 8 for the three periods of time that we
10 have delineated. Two periods of time are from 1994
11 through 2001 for Bay 5, and then the early time for
12 Bay 8 is from 1994 through 2002.

13 There's a subsequent time that Bay 8 was used
14 later on in 2008 through 2013 once the stores were
15 ultimately split.

16 It's our position that the agreement was made
17 that, in fact, there was always a requirement for
18 United to be paid rent for the storage that was
19 utilized by the partnership; it was used for inventory,
20 it benefited the partnership, the partnership needed
21 that space. We believe the testimony has previously
22 been that there was open and continuous use during the
23 timeframes that we've delineated. We have leases to
24 demonstrate when those spaces were otherwise occupied
25 by third parties.

↑

10

1 We believe the testimony will clearly
2 demonstrate that the check that was written for
3 5,408,000 and change related only to Bay 1 and only to
4 a period of time from May of 2004 through the end of

5 2011 and, therefore, it didn't encompass Bays 5 and 8,
6 certainly not the earlier timeframes, and couldn't have
7 encompassed some of the latter times for Bay 8 because
8 that timeframe had not even occurred yet.

9 So, from our perspective, we believe those
10 are the issues that the Court has asked us to focus on,
11 which is, was there an agreement, was there use. We
12 believe there may be some quantum meruit claims; and
13 then whether or not the check was or was not to
14 encompass anything relating to Bays 5 and 8, and it's
15 our position it was not.

16 So I'm gonna limit my testimony to that. So
17 I think we can get to the crux of the matter without
18 completely starting from the beginning.

19 I don't know if Attorney Holt would like to
20 make an opening or if you want us to just simply jump
21 in to the testimony.

22 THE COURT: Attorney Holt?

23 MR. HOLT: Just very briefly.

24 I do think that the issues are framed. I
25 don't think that at this juncture I need to go over our

↑

11

1 position, which, of course, respectfully disagrees with
2 that set forth by Attorney Perrell. I just want to

3 make a couple comments.

4 I think that we are in agreement that all of
5 the exhibits will come in, so you're not going to be
6 getting objections, even though we'll argue their
7 relevance or other issues about them. So I think it's
8 should be a smooth hearing.

9 And to the extent that she offers any of her
10 exhibits, you don't need to wait for me to, you know,
11 object or not object; I consent to her exhibit coming
12 in.

13 And, secondly, I read all the opinions that
14 you've written. In your last opinion, there were still
15 two issues, legal issues; one dealt with whether or not
16 any claims before the cutoff set by Judge Brady for the
17 partnerships, could the pre 2007 claims be raised by
18 United. Since that opinion, you have written opinion
19 saying that it can and, therefore, I'm not going to
20 argue that point. I'd just like to preserve that point
21 for the record because you have addressed that issue
22 and rejected it. So rather than argue it again, I'll
23 just note that that's a legal point we've raised.

24 In the last opinion, you said it was still --
25 you didn't say -- you said it was open because it's

↑

1 open for all claims. Since then, you've ruled that
2 United is not bound by that ruling, so I'll
3 respectfully note my objection and not raise that
4 argument again.

5 Secondly, there was a statute of frauds
6 argument raised, and in focusing on the legal issues,
7 that remained an issue. I am not sure how the
8 testimony will go, but if, in fact, the testimony is
9 that these tenancies could have been stopped at any
10 time, meaning they could have been stopped within one
11 year, then I will probably be withdrawing that legal
12 defense as well at the end of this.

13 So I think the issues will really become
14 focused on what was -- what, if anything, was the
15 agreement, was there ever an agreement to pay rent.

16 THE COURT: All right. Thank you.

17 And United, you may proceed.

18 MS. PERRELL: Thank you, Your Honor.

19 United calls its first witness; it will be
20 Mr. Fathi Yusuf.

21 Mr. Yusuf, the court reporter is going to
22 swear you in. Could you raise your right hand.

23

24

25 ///

///



1 FATHI YUSUF,
2 having been first duly sworn
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. PERRELL:

6 Q Good morning, Mr. Yusuf.

7 Can you hear me okay?

8 A Good morning.

9 Yes. I can hear you, yes.

10 Q All right. And I know, Mr. Yusuf, that
11 the fact that we are not in a normal courtroom
12 setting, and you have your son Mike sitting next to
13 you and also Attorney Herpel, this is as if you were
14 on the stand, and so you'll have to answer the
15 questions directly. You're going to be able to, you
16 know, look to someone to assist with those answers.
17 I just want to remind you of that because I know the
18 setting is a little bit unusual. Okay?

19 A Yes. That's fine.

20 Q Okay. Mr. Yusuf, just going back a
21 little --

22 A May I make something clear,
23 Attorney Charlotte?

24 I have intention to ask for help for an
25 answer anytime I turning to a portion, just to clear

↑

14

1 the question, that I can understand one hundred
2 percent.

3 Q Okay. No problem. I understand.

4 I just -- if you can't hear something,
5 just let me know, and I'll try to repeat it or speak
6 louder so that it's clear. Okay?

7 A Okay. Thank you.

8 Q All right. Perfect. Thank you.

9 All right. Just going back in time a
10 little bit, and again, not to belabor all of the
11 background and the history, but were you in charge
12 of determining what rent was to be paid to United by
13 the partnership?

14 A After agreement, of course, between me and
15 the Hamed family, I was in charge after I have their
16 approval.

17 Q Okay. And just to orient everyone to the
18 timeline, at some point in time, did the Plaza Extra
19 shopping center burn?

20 A Yes.

21 Q And do you recall what time that was, what

22 year?

23 A I think sometime in 1992.

24 Q Okay. And then was it rebuilt and then
25 reopened?

15

1 A Yes.

2 Q And do you remember what timeframe that
3 was?

4 A It took about a year and a half, sometime;
5 about close to a year and a half to a year, eight
6 months.

7 Q Okay. And so when did United at the
8 Plaza Extra East reopen?

9 A Sometime in May of 1994.

10 Q Okay. All right. And during 1994, were
11 you primarily in St. Croix or were you in
12 St. Thomas?

13 A I was in St. Thomas --

14 Q Okay.

15 A -- working in the St. Thomas store.

16 Q Okay. And while you were in St. Thomas
17 working, did you periodically come back and return
18 to St. Croix?

19 A I normally come sometimes once every ten

20 days to spend about three, four days with my family
21 and then go back to work.

22 Q All right. During the time that the store
23 reopened in May of 1994, are you aware as to whether
24 or not the Plaza Extra East grocery stores used any
25 other bays in the Plaza Extra shopping center

16

1 besides Bay 1?

2 A Besides Bay 1, Bay 2 bay be used by
3 Plaza Extra East, Bay Number 5, and Bay Number 8.

4 (Defendants' Exhibit 7 marked for identification.)

5 BY MS. PERRELL:

6 Q Okay. Mr. Yusuf, if you could look at
7 Exhibit 7.

8 A Yes, I'm looking at Exhibit 7.

9 Q All right. What is Exhibit 7?

10 A That's the layout of United Shopping
11 Plaza --

12 Q All right.

13 A -- loading in which Plaza Extra East
14 located and the warehouses, Bay Number 5 and Bay
15 Number 8.

16 Q All right. And so this is an -- is this
17 an accurate drawing of the Plaza Extra Shopping

18 Center?

19 A I would say yes.

20 Q Okay. All right. Move to admit

21 Exhibit 7.

22 MR. HOLT: I don't have objection to any
23 of your exhibits coming in.

24 MS. PERRELL: Okay.

25

↑

17

1 BY MS. PERRELL:

2 Q All right. Mr. Yusuf, do you see the
3 numbers labeled on the --

4 MS. PERRELL: And I can do a share screen,
5 Your Honor. If that would make it easier for you,
6 I'm happy to do it if you want me to; if not, I'll
7 stay in this format.

8 What would be easier for the Court?

9 THE WITNESS: I didn't understand the
10 question.

11 THE COURT: I don't need it on the screen.
12 I have it before me.

13 BY MS. PERRELL:

14 Q So, Mr. Yusuf, I'm going to let you
15 continue to look at the hard copy as opposed to me

16 putting it on the screen, okay?

17 A Okay.

18 Q All right. So on the floor plan, where is
19 Bay 5? Does it have a marking?

20 A Bay 5, according to this sketch, before
21 the fire, it was three -- the number four store next
22 to Plaza Extra East. There's 2, 3, 4 and -- 1 is
23 Plaza Extra East. 2, 3, 4 was rented as 1,250
24 square foot each. And the one next to them is 3,125
25 square foot, and that is Number 5.

↑

18

1 Q Okay.

2 A Number 2, 3, 4 is the all 25 feet wide by
3 50 feet deep. Bay 5 is the same, 25-foot wide by
4 125 feet.

5 Q Okay. And can you also indicate where
6 Bay 8 is located on this sketch?

7 A Bay 8 is at the very end on the south side
8 of the building; it was right next to 7. It was
9 very last bay in that building.

10 And United Shopping Plaza was three separate
11 buildings, the East Building, the West Building, and
12 the South Building.

13 Q Okay. So --

14 A The South Building is two-story.

15 Q Okay. So the Bay 8, what was the size of
16 Bay 8?

17 A It will be 50 feet by 125.

18 Q Okay. And was there access to the rear of
19 that particular bay to the back parking area?

20 A Yeah. It was loading/unloading area.

21 Q Okay.

22 A And, yes, there is an access.

23 Q Okay.

24 A By the way, there's access to all of them.
25 Except 2, 3, and 4, they have no access, no exit

↑

19

1 into the supermarket warehouse.

2 Q Okay.

3 A But 5, 6, 7, and 8, they're free; they
4 have access right to the back of the
5 loading/unloading areas.

6 Q Okay. And is Bay 5, was it intended to be
7 warehouse or retail space?

8 A No, I have no intention whatsoever to have
9 any warehouses in my shopping plaza, just simply
10 because this is a retail complex; it's not a
11 warehouse complex. So to have it turn into

12 warehouse, I will really be hurting the neighbors.

13 Warehouse doesn't have public traffic, so
14 it's not to the interest of the shopping center to have
15 the front, the main entrance closed. So when it is
16 closed, it means less traffic for the neighbor. It's
17 not smart to have it design it for warehouse.

18 Q All right. And with Bay 5, did Bay 5, was
19 it finished -- was there any kind of special
20 finishes as far as the ceiling and the floor on
21 Bay 5 when the shopping center reopened?

22 A Yes. It was rented, and it was tile
23 finish on the floor, and tile finish ceiling -- tile
24 finish on the ceiling.

25 Q Okay. When the store reopened in May of

20

1 1994, was United Shopping Center in need of -- I'm
2 sorry -- was Plaza Extra, the grocery store, in need
3 of space for storage?

4 A I would assume so.

5 By the way, the supermarket is 69,000 square
6 feet. It had to have at least another 69,000 square
7 feet of warehouse to really run smooth.

8 Q All right. And so when it reopened, was
9 it utilizing Bay 8 for storage?

10 A Yes.

11 Q All right. And did you have any
12 discussions with anyone on the Hamed side about
13 paying rent to United for the use of Bay 8 and
14 Bay 5?

15 A That's right.

16 Q What was the discussion?

17 A I'll charge them rent, whatever I was
18 charging the other tenant.

19 Q Okay.

20 A And it's no way, no way in the world I
21 will give something for somebody that I don't need
22 his expertise or finance or knowledge, 'cause I was
23 the person in charge of that building, I am the
24 person who run that business, I am the one who have
25 the final word.

↑

21

1 The only thing is common sense, the store
2 need to run.

3 May I just bring an example?

4 Q Sure.

5 A I have a store, the same store right now,
6 it does not change in size.

7 For your information, and everybody to know,

8 that I have -- in Frank Wiesner warehouse, I have a
9 24,000 square foot warehouse, and I have another 4,000
10 square foot warehouse. They are full to capacity with
11 about ten, twelve full container in front of it,
12 because I own that property. And I build a
13 warehouse -- I build a parking lot, additional parking
14 lot next to United Shopping Plaza where you will have
15 minimum 50 container full of merchandise to support the
16 same 69,000 square foot store.

17 Q So --

18 A The thing is, a smart way is to have item
19 available for your customer. Customer come for one
20 item, I'm obligated to have it ready for them. If
21 not, that's mean I'm chasing my customers out.
22 Wally knows that, I know that, every businessman
23 knows that.

24 Q Okay. So is your point that obviously the
25 supermarket needed that space in Bays 5 and 8?

↑

22

1 A Yes. But I would like to comment on that.
2 Even if it need it, I rather rent a warehouse in
3 Frederiksted than really to give up Bay 5.

4 Bay 5, the wall was breaking while I'm in
5 St. Thomas. If I was there, I will not break that wall

6 at 10- or \$20,000 a square foot, because my duty is to
7 protect my tenant, not to block the store for
8 warehouse. And how I expect to get rent from him if I
9 chase his customers?

10 Q Right.

11 So, Mr. Yusuf, let me back up.

12 With regard to Bay 5, talk to me about how
13 did Bay 5 come to be utilized by the Plaza Extra
14 supermarket. How did that come about?

15 A When I came, there was not even finishing.
16 They tearing -- they tear back the way already. And
17 they want to use the forklift to store more
18 merchandise, just to support the store.

19 As I tell you, a warehouse is -- more
20 important is the sales area for a supermarket; I know
21 that, Wally knows that, everybody knows that, simply
22 because of our location.

23 If I was in the States, like any other store
24 in the States, I do not need warehouse more than 2,000
25 square feet because my supplier come and visit my

↑

23

1 showroom daily; and some of the supplier even, with the
2 merchandise, arrival free of charge to put the product.

3 But since we are located in the

4 Virgin Islands, we are at least 1,500 miles away, and
5 the shipment can only come one a week or, the very,
6 most is twice a week. Okay? You have to have
7 inventory on site.

8 Please, I would like to make comment --

9 Q Go ahead.

10 A -- for the judge and for Wally lawyer.

11 We have the brother -- this type of
12 industries is an item you need or have to have.
13 Whether you like it or not, it is necessary item; it's
14 not a luxury item. I'll give you an example.

15 Bathroom tissue or a paper towel. The
16 company produce the product and they have a certain
17 price, but to permit the product, they always comes at
18 least once every six months with a special, a good
19 special.

20 Now, when it comes to paper towel or bathroom
21 tissue or any similar to that, like detergent, anything
22 it's not food, in some cases we order eight container
23 of one item only, paper towel, 'cause we know it
24 doesn't spoil, and it's 5, 6 dollar saving on each
25 bundle; and it's worth it to have it that we can afford

↑

24

1 to sell it below our competitor and yet making more

2 money than our competitor. This is ammunition to
3 destroy the competitor, really --

4 Q Right.

5 A -- by buying eight container, one single
6 item.

7 Wally aware of it. One time he bought eight
8 container of paper towel, one item. Where will he put
9 it, on the roof? And fly away by the wind? Have to
10 have a warehouse. But I'd rather have a warehouse in
11 Frederiksted, not to rent my retail area for a
12 warehouse.

13 Q Okay. So, Mr. Yusuf, let me bring you --
14 that was helpful. Let me bring you back to the
15 Bay 5.

16 Tell me what happened when you returned to
17 St. Thomas and learned that the supermarket was
18 utilizing Bay 5. What was your reaction?

19 A Reaction, I get angry with my son.

20 Unfortunate, when this come to this, Wally is
21 intelligent to use my son. Is many times he been using
22 my son to make me shut my mouth. That's even when he
23 wanted to buy Pueblo -- this is another subject. He
24 said, "We want to buy Pueblo." Excuse me. "We want to
25 buy Pueblo." I said, "I'm not interested in Pueblo."

↑

1 He went behind my back, convinced my son to
2 go and buy Pueblo. We end up losing \$300,000 and not
3 buying Pueblo.

4 Wally uses my son many, many times just to
5 protect his back, say, hey, it's not me; it's your son.

6 Q Right.

7 Mr. Yusuf, let me ask you this. When you
8 came, were you angry with what had been done? And
9 what did you see had been done to Bay 5?

10 A I was very angry, but I have no choice but
11 to keep my mouth shut. I'm sorry to use this
12 language. But I was forced to shut my mouth.

13 Q Okay. Did you have any conversation with
14 Wally about having to pay rent for Bay 5 for the
15 use?

16 A First, in the first five, six words, I tell
17 him, "You have to pay rent."

18 Come on. How could I give him my property?
19 I own one hundred percent.

20 Q And when you told --

21 A I owe Hamed no favor. I am the one who
22 did him a favor. I owe him no favor to pay him
23 back. Whatever he wanted, Mohammad Hamed or his
24 sons, they have to pay for it. But I was always

25 been reasonable because I have two daughters married

26

1 to his children. And, unfortunate, they was taking
2 my daughters and use it as hostage.

3 One of them is divorced. The next one, I
4 don't want to talk to. I didn't want to talk to. You
5 know why? Her husband is my enemy, and she call him
6 "honey." Then stay with your honey.

7 Q Okay. Mr. Yusuf --

8 A Don't come back here.

9 Q Mr. Yusuf, let's focus just on the rent
10 issues for Bay 5 and 8, okay?

11 So with Bay 5, did you -- you spoke to
12 Wally -- did you speak to -- I want to be clear.
13 Did you speak to Wally about the partnership having
14 to pay for rent when they were using Bay 5?

15 A Definitely. Definitely. I will not
16 lie -- I will not lie for \$2,000 a month or 3,000 a
17 month rent.

18 Q Okay.

19 A Wally knows --

20 Look, I ran the business for 28 years. I
21 challenge Wally and any one of his brother if I ever
22 steel one penny --

23 Q Okay.

24 A -- I am not to steal. You know, I was
25 kind enough to keep my mouth shut. They break the

27

1 wall already.

2 Q Okay.

3 A But he has to pay me rent. He has to pay
4 rent.

5 Q Okay. And did he agree -- Mr. Yusuf, did
6 he agree?

7 A Oh, yes. Oh, yes.

8 Q All right. Let's move on.

9 In February of 2012, did you have
10 discussions with Wally about rent that was due for
11 Bay 1?

12 A No. I talked -- discussed it with him
13 about -- I give them rent for 3, plus 255
14 maintenance. The 255 is really to pay the expense.
15 The \$3, is only \$3 coming to me as rent.

16 And I know I'm committed for ten years. And
17 if I recall -- and we have losses, big losses with the
18 insurance because we was uninsured, and I decided to go
19 back together. But I told Wally, "Wally, since we lost
20 the store already, we might as well see if we can

21 extend the store." Say, "What you want to do?"

22 I say, "Let's see if I can buy a two acre,
23 and I willing to put 100,000 of my own money and the
24 rest" --

25 Q Okay. Mr. Yusuf, I don't mean to cut you

28

1 off, but I -- Mr. Yusuf, I'm not trying to cut you
2 off, but I do want to just focus on I'm trying to
3 get to the discussions that ultimately led to the
4 check for 5.4 million. Okay.

5 Everybody knows a lot of the background,
6 so if we can just focus on that issue.

7 So talk to me -- can you explain what
8 happened in the conversation that led to the
9 \$5.4 million check. What was the discussion?

10 A The discussion is I always want to be fair
11 to myself. I have a very strong conscience. I'm a
12 human. If I lose my conscience, I rather lose my
13 life. I have to be a gentleman, stand up with my
14 head up at any time.

15 So I want to be reasonable with my partner; I
16 don't want to take advantage of him. But,
17 unfortunately, I have been stuck for two years -- for
18 20 years, which is fine. I give my word; I have to

19 accept it. Okay?

20 I told him, "Wally, St. Thomas store is doing
21 much better than St. Croix store, but St. Croix store
22 is much larger. If I want to charge you rent per
23 square foot versus St. Thomas, it's not fair. I want
24 to charge you based on sales. You doing much
25 better" -- "We're doing much better in St. Thomas than

29

1 St. Croix, and I rather go and charge you whatever the
2 sale cost us in rent in St. Thomas, we want to apply
3 the same numbers into St. Croix sales on St. Croix
4 store.

5 Q Okay.

6 A So our purpose, by the way, it was sale.
7 It was not the size of the store, it was the -- the
8 bottom line is the answer, what this location can
9 give me back.

10 Q Okay. Mr. Yusuf --

11 A Now -- please, let me finish.

12 When the business was booming in St. Thomas,
13 here was slow. After two years, things turns around.
14 Why it turn around? By Cost U Less coming to us right
15 here in Sion Farm, we was forced to compete with our
16 neighbor. That cost the sale to go up. And then the

17 sale of St. Croix is far exceed St. Thomas sale, but
18 this is two, three, four years after the commitment,
19 after the agreement was made.

20 Q Okay. So, Mr. Yusuf, let me ask you to
21 look at Exhibit Number 3, please.

22 A Yeah. You see, if you notice -- I looked
23 at it this morning --

24 Q I know. Let me ask you the questions,
25 okay?

↑

30

1 A Yes.

2 (Defendants' Exhibit 3 marked for identification.)

3 BY MS. PERRELL:

4 Q Do you recognize this document?

5 A Yes.

6 Q Okay. What is it?

7 A This is represent my discussion and
8 agreement with Waleed and his father of the rent,
9 percentage rent of St. Croix store versus St. Thomas
10 store and --

11 Q For Bay --

12 A Yes. Go ahead.

13 Q Does this relate to Bay 1?

14 A This is only Bay 1.

15 Q Okay. And what period of time was this
16 calculation to be for?

17 A What period of time? It says -- it says
18 1/1/2004, 2031 (as stated). This is the sale. The
19 sale, it's on paper. Everything mentioned here.

20 Q Okay. So this document is -- was this the
21 calculation for the period of May of 2004 through
22 the end of 2011 for Bay 1?

23 A Yes. After they enjoyed ten years of rent
24 at 555.

25 Q Okay. So this was for a second period of

↑

31

1 rent for --

2 A The third period, by the way.

3 Q Okay. Right. Okay.

4 For the Bay 1 store?

5 A Yes. This is based on our conversation,
6 we're not going by square footage, we're not going
7 by location; we want to go by strictly sales, based
8 on sale. I was trying to be fair, and it's come up
9 to be to our advantage.

10 Q Okay. And so let me just --

11 I'm assuming that it's correct, but I'll
12 officially go ahead and officially move to admit

13 Exhibit 3 in to evidence.

14 MR. HOLT: No objection.

15 BY MS. PERRELL:

16 Q All right. So, Mr. Yusuf, at the time
17 that you were preparing the calculations in
18 Exhibit 3, and it included the period of time only
19 from May 2004 through December of 2011 --

20 A That's correct.

21 Q -- did you still have a claim for rent for
22 Bay -- I'm just now talking about Bay 1 for 1994
23 through 2004?

24 A Yes.

25 Q Okay. And --

↑

32

1 A It's a separate location and it's separate
2 bill and separate agreement.

3 Q Right. Okay.

4 And you weren't asking to collect that at
5 this time in 2012; isn't that correct?

6 A I did ask for it.

7 Q Okay. But did you have the black book yet
8 to be able to calculate that amount?

9 A I don't remember. I don't recall.

10 Q All right. But that was separate? 1994

11 through 2004 for Bay 1 was separate, correct?

12 A Absolutely separate. The number will
13 show. It does not show anywhere else whatsoever on
14 it.

15 Q Okay. And does this calculation, the
16 \$5,408,806.74, did that include at all any rent that
17 you're claiming for Bays 5 and 8?

18 A Definitely and absolutely no.

19 Q Okay.

20 A It's only cover Bay 1, and it's stated. I
21 shows that St. Thomas store did \$217,895,569.95, and
22 how much it costs rent -- it cost us rent to sell
23 that money, four million 430, whatever it is. It
24 come out to be 2.03333. I multiply it for our sale
25 of 271 on St. Croix. Our sale much higher than

↑

33

1 St. Thomas.

2 When we cut the agreement -- I want you
3 please bear with me. When I cut the agreement, I have
4 never thought customers is going to come next door. I
5 did it based on sales. St. Thomas was doing -- excuse
6 me. St. Thomas was doing a lot much better than
7 St. Croix, so I will never get this kind of money if
8 St. Thomas was up high just like before.

9 But things change after this agreement.
10 PriceSmart came in, took business from St. Thomas;
11 Cost-U-Less came in, give business to Sion Farm. I
12 wasn't aware of these changes, but it end up to our
13 advantage.

14 Q Okay. again, I'm trying to focus on that
15 this calculation was limited to Bay 1 for that
16 period.

17 A Absolutely. Yes.

18 Q And in your conversations with
19 Waleed Hamed during this timeframe, did he or you
20 ever discuss including anything having to do with
21 Bay 5 or 8?

22 A What you mean?

23 Q When you were having this -- when you
24 provided this calculation to them --

25 A Yeah.

↑

34

1 Q -- to the Hameds, this Exhibit 3, did you
2 at all discuss Bay 5 or 8? Was it at all part of
3 the discussion?

4 A We have never discussed it. I send them a
5 bill for Bay 1. I did not send a bill at that time
6 on that day for Bay 5 and 8.

7 Q Okay.

8 A That was separate item.

9 Q Okay. Let me have you look at Exhibit 4.

10 MR. HERPEL: What is that document?

11 MS. PERRELL: It's the check.

12 THE WITNESS: I seen it. It's a copy of a

13 canceled check.

14 (Defendants' Exhibit 4 marked for identification.)

15 BY MS. PERRELL:

16 Q Okay. Mr. Yusuf, do you recognize this

17 check?

18 A Yes.

19 Q Okay. And is this check the check based

20 on the calculation that you made for the Bay 1 rent

21 for that period?

22 A That's exactly the same number, not even

23 one penny more or less.

24 Q Okay. And you authorized -- let me ask

25 you this. Who are the signatories to this check?

↑

35

1 A One of my sons, Yusuf, and Waleed Hamed.

2 Q And you authorized this check to be cut,

3 correct?

4 A No, I don't have to be there to have it.

5 They're authorized to write it, one signature of
6 each family.

7 Q Right. But I'm saying, you told
8 Yusuf Yusuf it's okay to sign this check, right?

9 A I was not there. I don't remember. I
10 could be in St. Thomas.

11 Q Okay. You understood that you accepted
12 this check because you understood it was the payment
13 for the calculation that you had made, correct?

14 A It's clean, clear. It's clear like the
15 sun.

16 Q Okay.

17 A It's this number matches the other
18 numbers.

19 Q Right. Right.

20 A And the other numbers mention nothing
21 about warehousing, nothing whatsoever. We were
22 discussing Bay 1, and the bill is for Bay 1.

23 Q Okay. And did the Hameds ever say
24 anything to you when this check was being issued
25 that this includes all the rent that's ever been

↑

1 due, or did they say anything like that?

2 A No. I've never even talk to Wally.

3 MS. PERRELL: I move to admit Exhibit 4.

4 MR. HOLT: No objection.

5 BY MS. PERRELL:

6 Q Okay. Mr. Yusuf, at the time that you
7 received this check in February of 2012, this
8 lawsuit had not been filed, the lawsuit that is
9 part -- that is the case that we're in now. Okay?

10 A Okay.

11 Q And at the time that you received this,
12 did you have any idea that there would ever be a
13 challenge to the other rents that would be claimed
14 by United?

15 A A bill; I think I was giving it to my
16 lawyer to resolve.

17 Q What I'm asking is, is before the lawsuit
18 got filed, did you ever believe that the Hameds
19 would contest or challenge that they ever owed
20 you -- owed United back rent?

21 A No, I never have that. And, listen, I
22 have the final word on everything. I have the final
23 word on these two warehouses. A rent have to be
24 paid.

25 Q Okay.

↑

1 A Over looking, that is not mine -- let's
2 say it's for whoever, I am the man they both agreed
3 on record I have -- I have the final word of every
4 move.

5 I brought these people -- I brought them
6 multi, multi millionaires, and everything was fine
7 until I caught them stealing.

8 Once I caught them stealing, even the
9 Virgin Islands became heaven, I want to get out of it.
10 I don't want to work with these people. I don't work
11 with a thief, period.

12 Q All right. Let me focus you back again,
13 Mr. Yusuf, with regard to the rent.

14 With regard to Bays 5 and 8, could you
15 have expelled them at any time if you rented it to
16 an outside third party for Bay 5 or 8?

17 A Yeah, they know I was renting it for --
18 earlier I was renting it for somebody else, and I
19 was renting that for, I think, Island Girl;
20 island Girl, I believe.

21 It's -- look, this is not out of my head.
22 It's that space in the market building, I build them.
23 It's not -- I own the building, I agree. But I have to
24 be fair. I can't brought a price if it's not
25 reasonable.



1 Q Okay.

2 A And it only makes it solid reasonable by
3 showing somebody else taking it for the same money.

4 Q Right.

5 A And what else Wally want? He want free
6 ride?

7 Q Mr. Yusuf, I'm just -- let me ask you
8 this. Was it your understanding that if you rented
9 Bay 5 to someone else Plaza Extra would just have to
10 remove the items?

11 A Yeah. I told him as soon as the tenant
12 come in, you have to get out.

13 Q Okay.

14 A I don't care if I have to go Frederiksted
15 for warehouse. We need warehouse, but not in my
16 retail area. I will damage my tenant.

17 Q Okay. All right. When was the first time
18 that you were made aware that -- well, let me back
19 up.

20 When was the first time that you were
21 aware that the Hameds were claiming they did not owe
22 you rent for Bay 5 or 8 or even that earlier period
23 at Bay 1?

24 A I don't know. A few weeks ago. I don't
25 know that they don't want to pay.

↑

39

1 Q Okay. Well, you know that they're --

2 A And they owe me the money.

3 Q Okay.

4 A I was never aware they don't want to pay.

5 Q Okay. At some point do you understand
6 that they have contested, for example, the claims
7 that you are making for the Bay 1 rent that was from
8 1994 through 2004? Do you recall that Hamed was
9 contesting that they should have to pay that?

10 A Yeah, only when I increased the rent, when
11 they refused to leave when I caught them stealing, I
12 gave them 15 or 16 -- 15 to 18 month free to move;
13 that's find a location. "I want you get out of my
14 property." And when the time is finished, they
15 never even tried to move. Then I started to bill
16 them higher --

17 Q Okay.

18 A -- \$200,000 a month, and then for few
19 months. And when they ignore me, then I raised it
20 up to 250. That, unfortunate (inaudible).

21 Q Okay. Mr. Yusuf, what I'm trying to

22 understand is, is at some point in time after you
23 received the \$5,408,000 check, was there a point in
24 time later where it became known to you that the
25 Hameds were gonna be contesting various other rent

40

1 claims?

2 A No.

3 (Defendants' Exhibit 5 marked for identification.)

4 BY MS. PERRELL:

5 Q Let me ask you to take a look at
6 Exhibit 5, please. Exhibit 5 is a letter that one
7 of your prior attorneys, Nizar DeWood, wrote to
8 Attorney Holt after the lawsuit was filed.

9 Do you see that?

10 A Yeah. Okay.

11 Q Okay. And do you recognize that?

12 A Yes.

13 MS. PERRELL: Okay. Again, just for
14 purposes, move to admit Exhibit Number 5.

15 THE COURT: It's admitted.

16 Attorney Holt said he has no objection to any
17 of your exhibits, so...

18 MR. HOLT: I apologize. Yeah, I have no
19 objection, so...

20 MS. PERRELL: Okay. Thank you.

21 I'm just formally admitting them, because
22 some of them, I'm not going to admit, so I just want to
23 make sure there's clarity as to what comes in and
24 doesn't.

25 BY MS. PERRELL:

41

↑
1 Q Okay. Mr. Yusuf, in this letter, your
2 lawyer is asking and making a claim for the rent for
3 Plaza Extra -- I'm sorry -- the rent for United for
4 the early timeframe, January 1994 through April of
5 2004, for Bay 1; is that right?

6 A Yes.

7 Q Okay. And then they are also making a
8 claim for rent for Bay 5, and some rent for Bay 8.
9 Do you see that?

10 A Yes.

11 Q Okay. And do you know whether or not your
12 claims, United's claims for the rent, the early
13 Bay 1, the Bay 5, and the Bay 8, was objected to by
14 the Hameds? Were they objecting to that claim?

15 A No, not that I know of.

16 Q Okay. Mr. Yusuf, do you believe that they
17 are ready to pay you today for Bay 5 and 8? That's

18 why we're here, is because they're objecting to your
19 claim, okay? Do you understand that?

20 A Now they objected, lately --

21 Q Right.

22 A -- that I know about it; they objected.

23 Q Right.

24 And they've been objecting to it since the
25 lawsuit got filed; isn't that true?

↑

42

1 A I'm not aware of.

2 Q Okay.

3 A I am not aware of this. If they objected
4 to my lawyer without my lawyer telling me, that's a
5 different story.

6 Q Okay. Last question, Mr. Yusuf. You
7 understand that this is a contested issue, whether
8 you should get rent for Bay 5 and Bay 8. They are
9 saying you shouldn't; you're saying you should,
10 correct?

11 A Yes.

12 Q Okay.

13 A But this -- if I give up my life, I'm not
14 going to give up this rent for two warehouses --

15 Q Okay.

16 A -- because he enjoys it. Plaza Extra
17 partnership take the benefit out of it. Why at my
18 expense? Why?

19 Q And, Mr. Yusuf, my question is, is before
20 the lawsuit was filed, you never thought that they
21 would contest your claims to the rent; isn't that
22 correct?

23 A I never thought that because I know they
24 was there, and I know they knew they are tenant.
25 How could they get these free of charge? Who they

↑

43

1 are? They think I'm a carpet, just walk over me?
2 No. I'm a human being.

3 Q Okay. All right. So, Mr. Yusuf, earlier
4 in the lawsuit, a motion was filed asking for the
5 rent and asking the Court to give us the rent back
6 in 2014, and during that time, you prepared a
7 statement or a declaration, in August of 2014. Do
8 you remember that?

9 A Maybe. I don't know. I don't remember.
10 But if it's there, it's there.

11 (Defendants' Exhibit 2 marked for identification.)

12 BY MS. PERRELL:

13 Q Okay. Let me ask you to look at Exhibit

14 Number 2.

15 A This is Number 2? Yeah, what's in Exhibit
16 Number 2?

17 Q Okay. That's what I was gonna ask you.

18 Are you familiar with Exhibit Number 2?

19 It says, "Declaration of Fathi Yusuf." Take a few
20 minutes to look at it.

21 A I see my signature on it. Yes, I did it,
22 but I don't remember it.

23 Q Okay. All right. Have you had an
24 opportunity to review it recently to determine
25 whether it's accurate?

↑

44

1 A If it sign on it, it's accurate.

2 Q Okay.

3 A And I did not -- I signed to it here; it
4 is accurate. This is my -- wait a minute. Yeah, if
5 I sign for it, I agree with every word I say there,
6 but I don't remember what's word in there.

7 Q Okay.

8 A That's something happen over ten years.

9 Q Right. All right.

10 MS. PERRELL: And, again, move to admit
11 Exhibit 2.

12 MR. HOLT: No objection.

13 BY MS. PERRELL:

14 Q All right. So with Exhibit 2, Mr. Yusuf,
15 this was relating to various details as to the
16 amount of rent you were asking for for Bays 5 and 8.
17 Again, your testimony is, is that the information
18 here, which was given, you know, six or seven years
19 ago almost, that you knew it was accurate at the
20 time that it was prepared, correct?

21 A Yeah. It's prepared by my lawyer, and I
22 signed to it, and it's true.

23 Q Okay. All right. And in preparing
24 this -- if I could ask you to look at the last page.

25 A Guys, I'm looking at the last page where

↑

45

1 my signature is. It's on August 12th, 2014.

2 Q Keep going. There is a couple of
3 exhibits. I want you to go to the very last page of
4 the last exhibit. It should say "Chronology of
5 Rents." Do you see that?

6 A Yes.

7 Q Okay. This was part of your Declaration,
8 and it summarized the rents that you were making a
9 claim for, the Bay 1, early Bay 1; the Bay 5; and

10 the Bay 8. Is that correct?

11 A That's correct.

12 Q Okay. So to just visualize this for
13 everyone, Bay 5, you have chronicled those rents to
14 start on May 1st, 1994, and to end on July 31st,
15 2001. Do you know if that is still accurate?

16 A It is accurate.

17 Q Okay. And how did you calculate the
18 amount that was due for Bay 5?

19 A Based on lease or -- I don't know based on
20 what, honestly. This is old enough. I don't know.

21 Q Okay.

22 A But I must have a lease or paperwork for
23 it. This is you telling me something like six and
24 seven years ago.

25 Q Okay. Can I direct your attention to

↑

46

1 Paragraph 22 of your Declaration and ask if you can
2 take a look at that to maybe refresh your
3 recollection as to how you calculated rent for
4 Bay 5.

5 A Yes.

6 Q So now that you've read that, Mr. Yusuf,
7 how did you calculate the rent that United is

8 claiming for Bay 5?

9 A I calculate it based on rent is 303,125
10 square feet, times \$12 times, times the time they
11 spend there, and it came up with 271,875.

12 Q Okay. And how did you determine what the
13 years were? Did you base that upon when there
14 was -- when it was leased to a third party?

15 A I don't recall, honestly.

16 Q Okay.

17 A I don't recall. This is something happen
18 in I don't know how many years ago, and I go through
19 too many things every single day.

20 Q Okay. Let me ask you to take a look at
21 Exhibit 11, please.

22 (Defendants' Exhibit 11 marked for identification.)

23 THE WITNESS: Yeah, this is -- that's
24 the -- for Bay -- Bay Number 5. It's a lease
25 contract for Bay Number 5.

↑

47

1 BY MS. PERRELL:

2 Q Right.

3 A And then this document here, I must have
4 relied on this document then.

5 Q Okay. So is this -- Exhibit 11 is a

6 contract with United Shopping Center for Bay 5
7 starting on September 3rd, 2001; is that correct?

8 A Whatever it is, is correct.

9 Q Okay.

10 A Whatever is in there is correct. It's not
11 a made-up story.

12 Q I understand.

13 MS. PERRELL: Okay. Move to admit
14 Exhibit 11.

15 MR. HOLT: No objection.

16 BY MS. PERRELL:

17 Q Mr. Yusuf, after Bay 5 was rented,
18 starting in September of 2011, United -- I'm
19 sorry -- Plaza Extra never used Bay 5 after that; is
20 that correct?

21 A If it's rented, we have to rent it. It
22 will be effective after the wall was finished.

23 Q Okay.

24 A Because we finish the wall for him, I
25 think; I don't recall. Either we finish it or they

↑

48

1 finish it; I honestly don't remember.

2 Q All I'm trying to understand is that
3 you're not making -- you're only making a claim for

4 Bay 5 from May of 1994 until it was rented again,
5 and so you're ending that on July 31st, 2001; is
6 that correct?

7 A Yes, because we was using it.

8 Q Right.

9 A Not only rented, we was using it. The
10 Plaza Extra East was using that bay.

11 Q Right. Okay.

12 And then with regard to Bay 8, let me ask
13 you again. Bay 8 was being utilized, in your
14 chronology, which is the last page of your
15 Declaration -- go back to Exhibit Number 2, the last
16 page.

17 A I'm looking at it.

18 Q Okay. So this chronology is a summary of
19 all of the calculations that you set forth in your
20 Affidavit from a couple of years ago where you had
21 all of this information clear, and you are claiming
22 rent for Bay 8 for May 1, 1994, through
23 September 30th of 2002; is that correct?

24 A That's right.

25 Q Okay. And do you recall how you

↑

1 calculated the rent for Bay 8? And if you don't

2 recall -- well, let me ask you. Do you know how you
3 calculated the rent for Bay 8 for that period?

4 A Either -- the space is known, 6,250 square
5 feet. How much a square foot, I don't remember.
6 Matching it with the previous tenant, I don't
7 remember.

8 Q Okay.

9 A I must have a solid evidence --

10 Q Okay.

11 A -- why I brought these numbers.

12 Q Right. So let me get you to look back at
13 Paragraph 23. Can you look back at Paragraph 23 of
14 this Declaration.

15 A It says for the period --

16 Q Wait, wait. Mr. Yusuf, just read to it
17 yourself. Take a moment to read Paragraph 23 to
18 yourself.

19 A Yeah, I seen it.

20 Q So having read that, how did you do the
21 calculation for that first Bay 8 rent, which was
22 from May 1, 1994, through September 30, 2002?

23 A It's the square footage, 6,250 times
24 \$6.15, is covering eight years and five months. And
25 the total for Bay 8 is 323,515.63.

1 Q Okay. For that period?

2 A For that period, yes.

3 Q Okay. Let me also ask you to take a look
4 at Exhibit 12.

5 (Defendants' Exhibit 12 marked for identification.)

6 THE WITNESS: This is a lease, Bay 8,
7 Mahmud Idheilah and United.

8 BY MS. PERRELL:

9 Q Okay. And is --

10 A They must be a lease.

11 Q And is the date on that October 1st, 2002?

12 A Yes.

13 MS. PERRELL: Okay. And so move to admit
14 Exhibit 12.

15 MR. HOLT: No objection.

16 BY MS. PERRELL:

17 Q All right. And Mr. Yusuf, does this
18 represent the period that Bay 8 was rented so it
19 marks the end of when Plaza Extra was able to
20 utilize it starting in 2002? -- for that timeframe,
21 correct?

22 A Yes.

23 Q Okay. Let me ask you again. There was
24 another period of time that Bay 8 was utilized in

25 2008 through 2013; is that correct?

51

1 A Yes.

2 Q Okay. And how did you calculate the
3 amount due for that period?

4 A Let me --

5 Q Let me ask you this. Did you do the same
6 calculation as far as the square foot by the same
7 price?

8 A I don't know what price; it could be up.
9 You see, I don't know. I do not know the price at
10 that time.

11 Q Okay. Let me ask you again --

12 A I know it's same square footage.

13 Q Mr. Yusuf -- right. Of course.

14 So let me ask you to, again, refer to
15 Paragraph 24 of your Declaration.

16 A Yeah, it mentions here in my Declaration,
17 it says from period April 1st, 2008, through May 30,
18 2013. The total occupied time is eight years.

19 One second. Bay 8, the Second Bay 8, owes
20 rent for Bay 8 -- Second Bay 8. The Second Bay 8, it's
21 calculated by 6,250, for the same rate, 6.15, for five
22 years and two months.

23 Q All right. What is the total that you're
24 making -- that United is making the claim for that
25 Second Bay rent -- Bay 8 rent?

52

1 A The what?

2 Q What is the total amount you're asking for
3 for that Second Bay 8 rent?

4 A Oh. \$198,593.75.

5 Q Okay. All right.

6 MR. HERPEL: Charlotte, can we take a
7 one-minute break while Mr. Yusuf --

8 THE WITNESS: That's okay. I can hear
9 with one ear. Go ahead.

10 BY MS. PERRELL:

11 Q All right. Mr. Yusuf, we anticipate
12 you're gonna receive some questions relating to some
13 tenant accounting records. Let me ask you this
14 question.

15 Did you ever discuss this arrangement that
16 you had with the Hameds for Bay 1, Bay 5, or Bay 8
17 with any of the accounting people that were at
18 United or the United Shopping -- Plaza Extra East?

19 A If I ever discuss these three locations
20 with my project manager, you mean?

21 Q Did you ever discuss the arrangement that
22 you had, the rent -- we've talked a lot about the
23 rent that you had for the plan for Bay 1, which was
24 the 555 a square foot, for ten years, and so forth.
25 We've talked a lot about Bay 5, what that

↑

53

1 calculation was; Bay 8, the first one, the second
2 one.

3 Did you ever have -- did you ever convey
4 any of that to the people who were the internal
5 accounting people relating to the United Shopping
6 Center or that were at the Plaza Extra store?

7 A No.

8 Q Okay.

9 A It's -- the --

10 Q Why not?

11 A The simple reason is -- simple reason, how
12 could I pay myself rent? It's known for the public
13 the company is mine. Partner between me and Hamed
14 is on the side with no even paperwork; he's my
15 partner for the profit. And I don't want to pay
16 taxes on rent that I am paying, you know. Now,
17 nobody charge himself rent to go just for the simple
18 reason just to pay taxes.

19 Q Okay.

20 A That's the only reason. Therefore, it's
21 not necessary for my controller to have any of these
22 on the company record. It doesn't need to go on the
23 company record because if it goes into company
24 record, it's going to the accountant, and the
25 accountant have to go what the record say. So no

↑

54

1 rent is been on record, neither the supermarket
2 or -- or the warehouses.

3 Q Okay. So with regard to when you asked
4 for the rent, did the Plaza Extra grocery store
5 benefit by the fact that you allowed rent to just
6 accumulate over time?

7 A Yeah. See, because I was using the rent
8 money to buy properties for me and them, and all
9 property I bought, it's -- I give them the benefit
10 of own 50 percent of that property.

11 I buy (inaudible) ^CK for \$2 million, and
12 Walgreen offer me 10 million-dollar to sell it.
13 Mohammad Hamed owns 50 percent of it. Most of that
14 money was rent money; it was not Mohammad Hamed money.
15 But I don't want to be too low, say this is rent money.

16 I give you an example, Attorney Charlotte,

17 and I like everybody to hear it.

18 I rented a laundry to Mohammad Hamed for, I
19 think, \$600 a month. He went ahead and rent it. He
20 have not operate it one single day. He went ahead and
21 rent it for double the money to an outsider. I was
22 happy for him.

23 I could really void that lease because that
24 lease says you have to pay for your own water. I
25 supply Mohammad Hamed tenant free water for ten years.

↑

55

1 I did not mean to charge -- because if I charge the
2 man, the man will leave. I say, okay, you want to make
3 \$600 a month, let him make it, 'cause my two daughters
4 there.

5 Q Okay.

6 A Everything.

7 My two daughter break my neck.

8 And look where it is. He thought he have a
9 lease. He had a lease, but it was -- you're supposed
10 to pay for water, Mohammad Hamed. And you went and
11 doubled the money, rent it to somebody for double the
12 money.

13 And if I was a bad person or don't want you
14 to make that money, I could just send my bill for the

15 water, but I never did that. Just to show you the kind
16 of man I am.

17 Q Okay.

18 A I am here for dignity, not for money. I'm
19 here for my conscience, not for money.

20 I know his father, whatever he did in life,
21 God bless him. He born naked and he dead naked. He
22 did not take one dollar with him. Unfortunate, he
23 brought his name -- his hand on the Quran and lie.

24 Where is the money he took with him?

25 Q Okay. Mr. Yusuf, let me bring you back to

56

1 the issue.

2 A Yes.

3 Q So just getting back to it, is it your
4 testimony that you discussed the rent that would be
5 due for Bays 5 and 8 with Wally, and that Wally
6 agreed?

7 A Yes, one hundred percent. I have no doubt
8 in that.

9 Q Okay. And is it your testimony that the
10 \$5,408,000 and change was ever to include any claim
11 for rent for Bays 5 and 8?

12 MR. HOLT: Your Honor, I just want to note

13 that --

14 THE WITNESS: He --

15 MR. HOLT: Your Honor, I'd just like to
16 note that is a different question and I hope I --

17 THE WITNESS: He never mention it. The
18 document speak by itself.

19 This 5,408,806, that's the result of
20 St. Thomas rent and St. Croix rent; it does not say
21 anything about warehousing.

22 And when I see amount is exactly the same, I
23 went ahead and sign the check -- I mean, tell my son,
24 go ahead and deposit the check. We deposit it based on
25 the information I supplied them, with detail, with

↑

57

1 document, not only this document; they have a lot of
2 documents was attached to it.

3 MR. HERPEL: What document are you looking
4 at?

5 THE WITNESS: Exhibit 3.

6 BY MS. PERRELL:

7 Q Okay.

8 A It's there. And --

9 You see, if you multiply -- if you divide
10 four million into 217, you will get the ratio of 2.33.

11 The answer, you multiply it by (inaudible) and sale and
12 that's what is come up 5 million 4.

13 Where the warehouses fall, which part? If
14 the warehouses was involved before they issue the
15 check, why they include warehouses? Just at least
16 appreciate it. Have me initial your note. You made
17 your check clear like the sun, versus this (inaudible).

18 THE COURT REPORTER: I'm sorry --

19 MS. PERRELL: Hold on.

20 THE COURT REPORTER: Yes.

21 BY MS. PERRELL:

22 Q Wait. Mr. Yusuf, your internet is
23 breaking up just a little bit. I think we got most
24 of it.

25 MS. PERRELL: Ms. Cèrge, were you able to

58

1 get most of it, or all of it?

2 THE COURT REPORTER: Just not the last
3 couple of sentences. It was a little wobbly.

4 BY MS. PERRELL:

5 Q Okay. Mr. Yusuf, would you mind to repeat
6 the last sentence or so that you just said. Your
7 computer wasn't clear for us.

8 A Okay. When I total whatever is in

9 Exhibit 3, I looked at how much we paid rent for
10 St. Thomas store. We paid for St. Thomas store
11 4,430,496.57, and the detail of the month and the
12 year is on the left-hand side of the page.

13 I get the ratio of 2.0333147073. I didn't
14 change that. I just multiply that by 266,009,325.57.
15 I came out with 5,408,806.74.

16 It's plain. It's clear, very clear. There's
17 no warehouses in here. There's no number in the
18 warehouse. There's no room -- only we're talking about
19 two stores. It's plain.

20 And he give me a check exactly. If it's one
21 penny different, I will take it back, his check. Why?
22 Ask me. Tell me why you deduct one penny.

23 The man, he respect my calculation. He went
24 through it, he finds it's correct, he issue a check.

25 Now, he come and tell me that's including the

↑

59

1 warehouses. He has to be out of his mind. I don't
2 think he has his mind with him.

3 Q All right, Mr. Yusuf. I don't think I
4 have any more questions.

5 MS. PERRELL: I don't know if the Court
6 would maybe indulge a quick break --

7 MR. HOLT: I think that's a good idea.

8 MS. PERRELL: -- or if we want to
9 continue. Obviously, it's up to the Court.

10 THE COURT: No objection. Take a
11 ten-minute break.

12 MR. HOLT: Okay.

13 MS. PERRELL: All right, everyone, ten
14 minutes. I'll just put the mute on.

15 THE COURT: Thank you.

16 (Off record.)

17 MS. PERRELL: Your Honor, I have no
18 further questions for Mr. Yusuf.

19 THE COURT: Attorney Holt?

20 MR. HOLT: Yes, Your Honor, I do have a
21 few.

22 Stefan, if you could put the exhibits that I
23 delivered this morning in front of Mr. Yusuf.

24 MR. HERPEL: Which one? All of them?

25 MR. HOLT: Yeah.

↑

60

1 MR. HERPEL: The ones that you brought?

2 MR. HOLT: Correct.

3 MR. HERPEL: Okay.

4 MR. HOLT: And, Your Honor, while he's

5 doing that, there will be duplication, but I've kind
6 of set up my questioning in this order --

7 MR. HERPEL: Some of the exhibits overlap,
8 but we'll use this pile of exhibits for the
9 questioning by Joel Holt.

10 CROSS EXAMINATION

11 BY MR. HOLT:

12 Q Mr. Yusuf, if you could pick up the first
13 exhibit -- it's Plaintiff's Exhibit A -- and it's
14 actually the last page of one of your leases. It
15 shows the footprint of the shopping center without
16 the lines on it. Do you see this?

17 A Yes.

18 (Plaintiff's Exhibit A marked for identification.)

19 BY MS. PERRELL:

20 Q Okay. And you see Bay 5, correct?

21 A Yes.

22 Q So was Bay 5 damaged in the fire, the fire
23 that took place in 1992?

24 A I don't remember. I don't think so. I
25 don't think so.

↑

61

1 Q Okay.

2 A I don't think so, because I remember there

3 was a drop ceiling there, still exists, and the wall
4 is not been tearing down.

5 Q Okay. In 1994 when the Plaza Extra
6 Supermarket opened up, can you tell me what the
7 condition of Bay 5 was?

8 A It was an empty space.

9 Q Was it ready --

10 A Correct.

11 Q Was it ready to rent for retail tenants?

12 A Yes.

13 Q No damage to the ceiling? No damage to
14 the floor? It was ready to rent?

15 A As I recall, no damage to the floor,
16 neither.

17 Q Okay. And then you look over and you see
18 Bay 8. Do you see that?

19 A I seeing Bay 8, yes.

20 Q And I take it Bay 8 was not affected by
21 the fire, was it?

22 A Bay 8 is what?

23 Q It was not affected by the fire, was it?

24 A No. I don't think so. No.

25 Q Okay. And in 1994, was Bay 8 ready to

↑

1 rent to a commercial tenant, a retail tenant?

2 A Always.

3 Q Okay. Did it have lighting?

4 A Yes.

5 Q Did it have a bathroom?

6 A Yes.

7 Q And so it was ready to go?

8 A Yes.

9 Q Okay. Looking at Exhibit -- you can put
10 that down for me right now.

11 (Plaintiff's Exhibit B marked for identification.)

12 BY MR. HOLT:

13 Q Looking at Exhibit Number 2 -- B,
14 Plaintiffs' Exhibit Number B, this is also a
15 document you've seen already, the letter dated
16 May 17, 2013, from Nizar DeWood, your lawyer, to me.
17 Do you see that letter?

18 A Yes. It's in my hand.

19 Q All right. And you see the part that's
20 boxed in?

21 A Yes.

22 Q Okay. So this letter in May of 2013
23 states that the rent for Bay 5 is for the time
24 period 1994 through 2001, at \$12 a foot. Do you see
25 this?



1 A Yes.

2 Q And this one says that the Bay 8 rent that
3 you're seeking is from April of 2008 to May of 2013,
4 at \$12 a square foot. Do you see that?

5 A That was a mistake.

6 Q Okay. And where did Mr. DeWood get this
7 information from?

8 A I don't know. Not from me.

9 Q Well, he's your lawyer, right?

10 A He's my lawyer, yes.

11 Q Okay. And this second item for Bay 8, it
12 doesn't seek any rent from 1994 to 2002, does it?

13 A I don't understand the question.

14 Q In looking at this letter dated May 17th,
15 2013, when we get to Bay 8, it only seeks rent from
16 2008 to 2013, correct?

17 A It should, yeah. That's what is there.
18 Yes.

19 Q And there's no mention about rent being
20 due from 1994 to 2002, is there?

21 A No, it doesn't show. No.

22 (Plaintiff's Exhibit C marked for identification.)

23 BY MR. HOLT:

24 Q All right. Showing you Exhibit Number C,
25 Exhibit C is the -- Exhibit Number C, if you could

↑

64

1 be shown it, that's the Answer and the Counterclaim
2 filed in this matter. Do you see that? Do you see
3 that document?

4 And if you'll look over to the
5 second-to-the-last page, you'll see that it's signed
6 by Attorney Greg Hodges on December 23, 2013. Do
7 you see that?

8 A Yeah, I seeing that. Yes.

9 Q Okay. And he was your lawyer at that
10 time?

11 A That's -- yes.

12 Q And if you'll then go back to the page
13 right before that one, two pages before that one
14 where it starts at the top with Paragraph 180, do
15 you see that paragraph?

16 Paragraph 180, do you see that?

17 A I see 180, yes.

18 Q Okay. And then in Paragraph 181, there's
19 a counterclaim for rent for Bay 5; it has the same
20 time period as Mr. Nizar's letter, at \$12 a foot.
21 Do you see that?

22 A This for what, Bay 5?
23 Q Yes.
24 A Yeah, Bay 5.
25 Q Okay. And then the next paragraph, 182,

65

1 it seeks rent for Bay 8 from April 2008 to May 2013,
2 which is the same time period that Mr. Nizar had.
3 Do you see that?

4 A Yeah, I seeing that, saying 16.15 a square
5 foot.

6 Q Okay. So -- well, Mr. Nizar said the rent
7 was \$12 a foot. Mr. Hodges has the rent at \$16.15
8 per rent, correct?

9 A I don't know where he get that number
10 from, not from me.

11 Q Do you see that, though, in the document
12 filed on behalf of your company, correct?

13 A This 793,984 is the total, is not -- is
14 covered in some other detail.

15 Q Okay. So Paragraph --

16 A Hold on. Hold on. Hold on, please.

17 Okay. This says, in the bottom of this where
18 the square is, it says 793,984.38. Somebody came up
19 with this number. I have the 799,984.38. 793,984

20 represents February 16 -- February 15, 2015. It shown
21 in detail, three numbers. I have it right here. I
22 don't know what this --

23 Q Mr. Yusuf --

24 A It does not represent what I have.

25 Q We'll get to that in a minute.

66

1 So in the filing in this case, the
2 Counterclaim in this case, there was no claim for
3 rent for Bay 8 from 1994 to 2002, was there?

4 MS. PERRELL: I would object. That
5 misstates the -- it misstates the evidence.
6 Ultimately there were claims not necessarily put in
7 the original counterclaim, but, yes, there have been
8 claims that were made. So I object that it
9 misstates the evidence.

10 MR. HOLT: I'm asking --

11 THE COURT: -- relates to the Answer and
12 Counterclaim.

13 MS. PERRELL: I'm sorry?

14 THE WITNESS: I want to speak about this,
15 whatever is in the square. Somebody made it up to
16 shoot my demand.

17 My demand is 793,984.38 break in three

18 portions; 271,875, Bay Number 5, from May '94 to
19 July 31st, 2001. That is for the space -- please allow
20 me to finish. The 3,125 square foot. The total was
21 271,875.

22 The second line, Bay Number 8, May 1st, 1994
23 to September 30, 2002, Bay 8 is April -- okay. This is
24 the total of eight years and five months. Total is
25 323,515.63.

↑

67

1 And the last column -- the last column is
2 Bay 8 again, April 1st, 2008 to May 30th, 2013, of
3 198,593.75. This give me the total of 793,984.38, is
4 exact total in that square.

5 Who made up this square, I don't know who.

6 BY MR. HOLT:

7 Q Okay. So you would agree --

8 A This is not from me. It did not come from
9 me, I can tell you that.

10 Q Okay. And so the figure in there of
11 \$16.15 square foot is wrong, isn't it?

12 A It is absolutely wrong, and it's not from
13 me.

14 (Plaintiff's Exhibit D marked for identification.)

15 BY MS. PERRELL:

16 Q Okay. And then we'll go to you, because I
17 want you to be able to feel like you've got your
18 say.

19 We look at Plaintiffs' Exhibit Number D,
20 which is a Declaration of Fathi Yusuf.

21 A Uh-huh.

22 Q And in this one, if you'll go to Paragraph
23 Number 23, you're now seeking in this Declaration
24 rent from 1994 to 2002 for Bay 8, at 6.15 a square
25 foot; is that correct?

↑

68

1 A Yes. It's always been \$6.15.

2 Q Okay. Now, let's go back up to the \$12
3 figure that you have in Paragraph Number 22 of your
4 Declaration.

5 A 22?

6 Q Yeah.

7 A Okay.

8 Q Now, when was the first time that you
9 talked to anybody about rent being due on Bay 5?

10 A I don't recall what date --

11 Q Do you recall what year?

12 A -- but when I send this statement in
13 February 16th, 2015, that's a speech by itself.

14 Q Okay. But you --

15 A This just came out from me, 'cause I have
16 a record of it.

17 Q Okay. So do you recall the first time
18 that you ever spoke to anyone about the store paying
19 rent for Bay 5?

20 A Speaking to whom?

21 Q Did you ever speak to anybody about the
22 store having to pay rent for Bay 5?

23 A Yes. Wally aware of that.

24 Q Okay. And when did Wally become aware of
25 that?

↑

69

1 A The time I stepped inside the store and
2 received him breaking the wall, I get upset and
3 screaming. I said, "Wally, this is for rent. It's
4 not for the warehouse."

5 He said, "We already break it." He say,
6 "Your son approve it."

7 I say, "You have to pay rent." He said,
8 "Yes. Sure, we'll pay rent."

9 "And you have to put it back together the
10 same way you destroy it." He say, "Yes."

11 And then I kept quiet on it. But it's

12 nothing free, nothing free.

13 Q Okay.

14 A I'm not Catholic Church.

15 Q All right. So, Mr. Yusuf, what year did

16 they break the hole in the wall and you see it?

17 What year was that?

18 A I don't recall what year. You have a date

19 says -- it says, May 1st to July -- the date there.

20 Q But that's not my question.

21 What year did you actually see the hole in

22 the wall and have this conversation with

23 Wally Hamed?

24 A Sometime in 1994.

25 Q May?

↑

70

1 A 1994.

2 Q In May of 1994; is that correct?

3 A Yes.

4 Q Okay. And who else was present when you

5 had that conversation?

6 A Wally, my son, and I don't remember who

7 was present.

8 Q And you specifically remember that month

9 and year is when that conversation took place?

10 A It could be in April. It could be in
11 April, but I normally don't go and charge for five
12 days or eight days or 12 days. I may be -- it could
13 be in April, I wouldn't doubt it. But the most
14 important is when I bought this, it is fact, and I
15 swear to it. I am under oath, and I will not lie
16 for this kind of money, and I have no reason to lie.

17 Q Now, you indicated that you have rented
18 warehouse space as well as retail space before; is
19 that correct?

20 A What you mean? Rent where?

21 Q Have you actually rented warehouse space
22 from other places yourself?

23 A If I ever rent warehouse spaces?

24 Q Yeah.

25 A I don't recall. Not for supermarket.

↑

71

1 What I'm going to rent a warehouse for?

2 Q Okay. So I thought you said you --

3 A Excuse me. Your question is very bride --
4 broad. What type of store, and where I did rent in
5 the past? Tell me where it is, and I'll tell you
6 yes or no.

7 Q Well, let me ask you this question.

8 You've indicated that you have some
9 warehouse space now at the Frank Wiesner place,
10 correct?

11 A Yes.

12 Q And do you own that space?

13 A I own it, I think less than five years
14 ago.

15 Q And do you pay rent to yourself there?

16 A No.

17 Q Okay. If you --

18 A Even though it's a different company, I
19 still don't mention rent.

20 Q Okay. If you were gonna pay warehouse
21 rent, would the rent be higher than retail rent or
22 lower?

23 A Wait a minute now. This building is not
24 designed for warehousing. This place, if Wally pay
25 me \$20 a square foot, I'm still a loser, because if

↑

72

1 my tenant affected, it's a chain; it's a domino. I
2 will be affecting the rest of the tenant, and
3 finally, I, myself, will be affected.

4 Q Okay. So my question --

5 A Sir, I respect that question, but does not

6 apply to me.

7 Q Okay. Do you pay more for warehouse rent
8 than retail rent or less for warehouse rent than
9 retail rent?

10 A Warehouse rent is always less, and the
11 location is not in a shopping center.

12 Q And --

13 A Location, location, location.

14 Now, you taking super -- number 1 store on
15 St. Croix was Plaza Extra East, and up to now is
16 number 1 store. You taking right nextdoor to it as a
17 warehouse; it's not built for a warehouse, but it was
18 make warehouse without my knowledge. So I said, okay,
19 I have it for rent. As soon as they have a tenant,
20 I'll put him out.

21 Because Wally, he have different philosophy
22 than mine. He have no (inaudible) in that building. I
23 put my brother in that building. We get too much cuts
24 not to give it to Wally free of charge.

25 Q Okay. So, Mr. Yusuf, I want to just make

↑

73

1 it clear then. Whenever you had a conversation with
2 Wally in 1994, you made it clear that if you had a
3 tenant, he would need to move out, correct? If you

4 had a retail --

5 A Yes.

6 Q Okay. So you made it clear to him in
7 1994, correct?

8 A 1994, yes.

9 Q Okay. And on Bay 8, when was the first
10 time you had a conversation with anybody about the
11 store paying rent for Bay 8?

12 A From the day they occupy it.

13 Q And what date did they start occupying it?

14 A Whatever the document read.

15 I don't have building free. And for who's
16 Wally, and who's his father? With respect to them as a
17 human being, I don't give them what is belong to me
18 free. They don't give me nothing free.

19 (Defendants' Exhibit 11 marked for identification.)

20 BY MR. HOLT:

21 Q Okay. So, Mr. Yusuf, looking at
22 Exhibit -- if you could, Mr. Yusuf, look at
23 Exhibit Number 11; that's one that you had marked,
24 and this is the Lease to Diamond Girl -- whatever
25 you call it -- September 2001.

↑

74

1 I take it that this is the first time you

2 were able to get a retail tenant to rent Bay 5; is
3 that correct?

4 A Well, it have to be, yes.

5 Q Okay. So between 1994 and this date, no
6 one else tried to rent that property; is that
7 your --

8 A A lot of people is interested, but they
9 don't want to pay the rent. A lot of people is
10 interested.

11 Q Okay. And when Diamond Girl came, did you
12 have to do any repairs -- other than close that hole
13 in the wall that we know about, did you have to do
14 any other repairs for them to move in?

15 A No. He do it. This is part of the deal.
16 I did not do it.

17 Q Okay. So looking at Page 6 of this
18 document, Exhibit Number 11, paragraph 9, and it is
19 called "Opening for Business," and it says:

20 "Landlord, at his expense, shall
21 replace the ceiling tiles in the
22 store area and repair hangers as
23 necessary, clean the tile floor,
24 repair the party wall," which we
25 know about, "and also provide air

1 conditioning for the premises."

2 So is that something that the landlord
3 did?

4 A I don't recall. It must -- if it's here,
5 we did it; if it's not here, we did not do it.

6 Q Okay. Do you know if there were any
7 ceiling tiles in the ceiling when you signed this
8 lease?

9 A I didn't understand the question.

10 Q Do you know if there were any ceiling
11 tiles in the ceiling when you signed this lease with
12 Diamond Girl?

13 A Attorney Holt, I'm in St. Thomas. I am in
14 St. Thomas, not in St. Croix. Direct that question
15 to my son.

16 (Defendants' Exhibit 12 marked for identification.)

17 BY MR. HOLT:

18 Q Okay. Looking at Exhibit Number 12,
19 that's Plaintiff's Exhibit 12, this is the Lease
20 that was given to Mr. Zgheir for Bay 8. Okay. And
21 this lease says it's gonna commence on October 1,
22 2002.

23 So my same question. Is this the first
24 retail tenant that came to you since 1994 to rent

25 this space?

76

1 A I don't understand the question.

2 Q Was this the first tenant that came --

3 retail tenant that actually signed the lease to rent

4 this space --

5 A It was not a retail.

6 Q Excuse me?

7 A He was a wholesaler.

8 Q Okay. But --

9 A He was not a retailer.

10 Q He opened a store, didn't he?

11 A Number 8?

12 Q Yes.

13 A No. He opened it as a warehouse for his

14 tenant, wholesale, not retail.

15 Q So --

16 A 'Cause he open it for grocery.

17 Q Okay. So someone could walk in the door

18 and buy things from him, correct?

19 A No. He's a wholesaler. He's not a

20 retailer. His front door is closed. His front door

21 in the shopping center, in the parking lot, are

22 closed --

23 Q Okay. I'll --

24 A -- back door.

25 Q I'll come back to that question then.

77

1 So in this particular one, did you have to
2 do anything to the premises to make it so he could
3 rent it?

4 A I don't recall.

5 Q Looking at paragraph 8 --

6 A Ask the question to my son for that.

7 Q Looking at paragraph 8, page 5, it says:

8 "Landlord will provide a loading
9 door."

10 So I take it there wasn't a loading door
11 until you added it in; is that correct?

12 A This question should be asked to my son;
13 he was in charge on St. Croix. I was always on
14 St. Thomas.

15 Q Okay. It also says you would remove the
16 existing ceiling, and you would install a working
17 bathroom, and you will install warehouse lighting.

18 Isn't it true that before this time period
19 there was no bathroom or lighting in this property?

20 A No. There was bathroom. There was two

21 bathrooms before.

22 Q Okay. Before 19 --

23 A Only when he left -- the tenant destroyed
24 it when he left.

25 Q Which tenant was that?

78

1 A Ali Hardware.

2 Q Okay. So between 1994 and 2002, there was
3 no bathroom lights in there, was there?

4 A I don't know.

5 Q Okay. Now, looking at Exhibit Number E --

6 MR. HERPEL: Which one is that, Joel?

7 MR. HOLT: Plaintiffs' Exhibit E.

8 (Plaintiff's Exhibit E marked for identification.)

9 BY MR. HOLT:

10 Q Going to page 3 of this document, it has
11 something called "Bay 5 - Period May 1, 1994 through
12 July 31, 2001."

13 Do you see that?

14 A Yeah. Okay.

15 Q Okay. And it says:

16 "Bay 5 is close to the entrance of
17 Plaza Extra East. It is one of the
18 most desirable storefronts in the

19 United Shopping Center."

20 Is that correct?

21 A Yes.

22 Q Okay. Then it goes down about two
23 sentences. It says:

24 "During the 1987 to 1992 timeframe,

25 Plaza Extra East was utilizing a

79

1 series of trailers as warehouse
2 space to provide additional storage
3 for inventory. There were eight
4 trailers, four on the bottom, four
5 on the top."

6 Where is that trailer system located?

7 A In the back, in the loading/unloading
8 area.

9 Q Behind the store?

10 A Behind the building, yes.

11 Q Okay. And you're sure those trailers were
12 there before the fire?

13 A I don't recall.

14 (Plaintiff's Exhibit F marked for identification.)

15 BY MR. HOLT:

16 Q Okay. Looking at Exhibit Number F, it's a

17 letter dated August 27, 2001, to Fathi Yusuf.

18 That's you, correct?

19 A Okay.

20 Q -- on United Corporation stationary. And
21 if you look over on page 2, it's signed by Thomas W.
22 Luff, Property Manager.

23 Do you know who Mr. Luff is?

24 A I don't recall him.

25 Q You don't know who Mr. Luff was?

↑

80

1 A I work in St. Thomas, sir. Ask these
2 questions to my son, please.

3 Q So if --

4 A You want me answer question that I'm not
5 aware of.

6 Q So you're unaware of even the name of the
7 property manager that United had in 2001?

8 A What's his name?

9 Q It says Thomas Luff, Thomas W. --

10 A I don't recall him.

11 Q Excuse me?

12 A I do not recall that man.

13 Q Okay.

14 A If I recall him, I doesn't recall him, I

15 have employment change in ten years over 20,000
16 people.

17 Q Okay.

18 A How you expect me to remember these
19 people?

20 Q All right. So if you will look over on
21 this document, you come down to the bottom of this
22 document to something that says, "FBIX237825." It's
23 about five pages over.

24 MR. HERPEL: What page?

25 MR. HOLT: Well, they don't have numbers.

81

1 It's the eighth page.

2 MR. HERPEL: I see Bates numbers.

3 MR. HOLT: Oh. Bates number FBIX237825.

4 BY MR. HOLT:

5 Q If you could look at this.

6 MR. HERPEL: You don't have Bates number
7 on yours, Joel?

8 MR. HOLT: Yes. Left-hand corner,
9 FBIX237825. Bottom left-hand corner.

10 MR. HERPEL: This is Exhibit E?

11 MR. HOLT: F.

12 MR. HERPEL: F, rather?

13 BY MR. HOLT:

14 Q The top of this page, it says, "Tenant
15 List, Accounts Receivable Current Month, July 27,
16 '01." Do you see that?

17 A Yes.

18 Q And then do you see where it says, "Bay 5
19 Plaza Extra"? Do you see that?

20 A I don't know where it says "Bay 5"? Yeah,
21 5. Yeah.

22 Q It says it's vacant, doesn't it?

23 A What date?

24 Q 7/27/01.

25 A If it's vacant, it's vacant.

↑

82

1 Q Okay. And then on Bay 8, do you see Bay 8
2 down there, it also says it's vacant?

3 A Yes, it's vacant.

4 Q Okay. And then on the next page over, it
5 says, "Accounts Receivable Current Month." Now,
6 what is accounts receivable mean? That means money
7 owed?

8 A Accounts receivable does not represent
9 something I occupied. Accounts receivable,
10 receivable from me, and I'm the owner. It does not

11 represent I am renting, because I'm not renting my
12 own property.

13 Q Okay. So looking at the next page where
14 it says, "Accounts Receivable," on Bay 5, there's no
15 accounts receivables, are there? All the other
16 tenants have some kind of accounts receivable
17 listed, but there's nothing for Bay 5, is there?

18 A All of the tenants have leases. These 5
19 and 8, when Plaza Extra East use them, it have no
20 leases. Plaza Extra East have no lease; they have
21 verbal commitment.

22 Q Okay. So you agree that there was no
23 accounts receivable listed on Bays 5 and 8; is that
24 correct?

25 MS. PERRELL: Objection. I believe that

↑

83

1 misstates his testimony.

2 THE WITNESS: That's not necessary to be
3 there.

4 BY MR. HOLT:

5 Q Excuse me? Mr. Yusuf?

6 A It's not necessary to be there because I
7 own it, I operate it.

8 Where is the accounts receivable for

9 Plaza Extra East? You tell me.

10 Q All right. Then looking over at the very
11 next page, it says, "Accounts Receivable Current
12 Month," and on this page for Bay 5, it actually has
13 a square footage of \$7.01. Do you see that?

14 A \$7.01 for what? It says,
15 "Plaza Extra East Vacant." I don't know what's
16 this. I'm not aware of this.

17 Q Okay. And looking down at Bay 8, it has
18 square rent at \$5.50, doesn't it?

19 A I'm not aware of these things. I never
20 seen this before.

21 (Plaintiff's Exhibit G marked for identification.)

22 MR. HOLT: Okay. Your Honor, the next
23 document is Exhibit Number G. Exhibit Number G is a
24 Declaration of Kimberly Japinga that the parties
25 have agreed can be used by stipulation, and I just

↑

84

1 wanted to briefly go over it with the Court.

2 And in this particular declaration,
3 Kimberly Japinga is explaining where this letter
4 came from. It was located in a box of documents
5 returned by the FBI from the partnership. They were
6 contained in a scanned file in Box Number 148, and

7 the image number for the box is attached as AA.

8 And after this litigation began, parties
9 rented space to house these documents and scan all
10 these documents, which was done through
11 Joyce Bailey, a local accountant.

12 The FBI files were sent, in paragraph 7,
13 by agreement, to Joyce Bailey, in April of 2014, and
14 a receipt was attached as Exhibit CC.

15 And then Kimberly Japinga, along with
16 Charlotte Perrell, reviewed the documents returned
17 by the FBI in April 2014, and selected documents for
18 scanning, and they were scanned. You'll see that in
19 Exhibit EE, and verified by the signature of
20 Attorney Perrell and herself.

21 And then on August 19, 2014, Joyce Bailey
22 submitted a USB jump drive with these documents in
23 it.

24 And the purpose of this Declaration is
25 just to show where the prior exhibit came from. And



1 the only thing that I will represent to you, that in
2 the scanning process, Joyce Bailey scanned not only
3 the front, but the back of each document, so that
4 every other page in the original scan was blank; and

5 that is why in the actual exhibit that we just went
6 over, Exhibit Number F, the Bates numbers jump pages
7 at some point.

8 Anyway, we offer Exhibit Number G into
9 evidence just to document where that came from.

10 THE COURT: All right. Any objection?

11 MS. PERRELL: Your Honor, we don't have
12 any objections. We're clear on where the documents
13 came from.

14 THE COURT: Thank you.

15 (Plaintiff's Exhibit H marked for identification.)

16 MR. HOLT: All right. Briefly, I'd like
17 the witness be shown Exhibit Number H.

18 BY MR. HOLT:

19 Q We've already gone over this. This is the
20 calculation where the back rent was done with the
21 check. Do you see that?

22 A Yes.

23 (Plaintiff's Exhibit I marked for identification.)

24 MR. HOLT: Okay. Now, can I have the
25 witness shown Exhibit Number I.

↑

86

1 BY MR. HOLT:

2 Q Now, Exhibit Number I is the Declaration

3 from Carl Hartmann, which the parties agreed can
4 come in. And Carl Hartmann is indicating that at
5 the outset of this litigation, a bunch of documents
6 were produced according to Rule 26; and one of those
7 documents produced is actually -- excuse me. Some
8 of those documents actually produced are files from
9 Plaza Extra East.

10 And if you were to turn over to
11 HAMD262204, in the bottom left-hand corner, it is
12 about ten pages down; it's really the first document
13 that is actually...

14 All right. Do you see that document with
15 the Tenant Account, has "February 2012" written on
16 the document, Scotiabank Tenant Account? Do you see
17 that?

18 A Yeah, I see something like that.

19 Q Who was making these postings for the
20 tenant account?

21 A Whom?

22 Q Who was doing this type of posting for
23 United?

24 A I don't know who. I say I'm in
25 St. Thomas.



1 Q So you don't know -- was it somebody in
2 the Accounting Department at the Plaza East
3 location?

4 A I don't know. I'm in St. Thomas.

5 Q By February of 2012, you weren't back on
6 St. Croix?

7 A I don't know where I been, but I am
8 working on St. Thomas. When I come to St. Croix, I
9 don't interfere with St. Croix work.

10 Q And then if you'll go over one, two,
11 three, four, five pages, you'll see a notation about
12 depositing the check for \$5,408,000. Do you see
13 that? It says it's being paid for back rent, it has
14 a Bates stamp 2209 on it.

15 Do you know whose handwriting that is?

16 A What you saying?

17 Q Do you know whose handwriting that is?

18 A Look like I have to state it for you in
19 French or some other language. I told you I'm in
20 St. Thomas. Ask these questions to my son.

21 Q So the answer is you don't know whose --

22 A I can't answer something I didn't know
23 nothing about.

24 Q Okay. All right. And then the next page
25 is --



1 MS. PERRELL: Joel, the only thing I would
2 just note is that the boxing, the arrows, and then
3 the types at the bottom is demonstrative additions
4 that I believe your firm or Attorney Hartman put on
5 there. I think everybody understands that, but I
6 just want to make sure that that's noted for the
7 Court.

8 BY MR. HOLT:

9 Q All right. And then if you'll just go
10 over two more pages, the next page is a check, and
11 then the next page is a document with a list on it.
12 You have to turn sideways to look. Again, it does
13 have demonstrative. It has the word "Paid" and the
14 word "Unit 8" on it. Do you see that?

15 A I see something like that, yes.

16 Q And --

17 A I still don't know who did this.

18 Q Okay.

19 A But I'm telling you, I'm stationed on
20 St. Thomas.

21 Q Okay. So according to this --

22 A Please don't ask me anything about
23 accounting or anything. Ask me about agreement or

24 discussion. This thing, I'm not in charge in
25 St. Croix. My son is in St. Croix. If he know

89

1 anything about it, he can answer you.

2 Q Okay. This particular account indicates
3 that Bay 8 rent has been paid, correct?

4 MS. PERRELL: Objections.

5 THE WITNESS: They could write whatever
6 they want. I'm not aware of it.

7 MR. HOLT: Okay. So we move Exhibit
8 Number I into evidence.

9 BY MR. HOLT:

10 Q So, Mr. Yusuf --

11 MS. PERRELL: Again, my only objection --
12 I have already agreed to these documents as to where
13 they came from and so forth. The demonstrative
14 components, obviously, we do not agree to. Whether
15 Mr. Yusuf can testify as to their accuracy or not, I
16 think the Court has heard his testimony.

17 BY MR. HOLT:

18 Q All right. So now, Mr. Yusuf, do you
19 have -- you indicated you hadn't seen all these
20 documents. Do you have one -- listen to me now.

21 Do you have one piece of paper between

22 1994 and today's date that shows any calculations
23 internally for back rent?

24 A No. I don't look at that.

25 Q Okay. So there's no written lease,

90

1 correct?

2 A I don't look at accounting.

3 Q That's not my question.

4 There was no written lease for Bay 5, was
5 there?

6 A There's no what?

7 Q There was no written lease between United
8 and the Plaza Extra store for Bay 5, was there?

9 THE WITNESS: What is he saying?

10 MR. HERPEL: He's asking if there was a
11 written lease between Plaza and United for Bay 5.

12 THE WITNESS: Nothing written for none of
13 the location, the store for 5 or 8. I have said
14 that to you over and over.

15 BY MR. HOLT:

16 Q Okay. And Mr. Yusuf, we have asked
17 repeatedly for you to produce copies of any
18 documents that show any ledgers where rent was
19 calculated, and to date none have been produced by

20 you, although we did find these two.

21 Do you have any ledgers anywhere that
22 would show rent was owed?

23 A I don't have anything because I don't
24 write. I don't have letter for anybody. This is an
25 agreement between me and my partner. I don't write.

↑

91

1 No record. Record is when you have something with a
2 stranger, with an outsider, not with your partner.

3 Q Okay. Now, you indicated that the rent
4 for Bay 5 was \$12. When did you make the
5 determination that that rent was gonna be \$12? In
6 1994? 1995? When did you decide that the rent for
7 Bay 5 should be \$12?

8 A There must be a solid basis why, and I
9 don't know when and where.

10 Q Okay. Well, in your Deposition that was
11 taken in 2019 -- and there is a copy there in front
12 of you if you want to look at it; it's been marked
13 as Exhibit Number 0.

14 (Plaintiff's Exhibit 0 marked for identification.)

15 BY MR. HOLT:

16 Q On Page 89, you were asked about asking
17 Wally --

18 MR. HERPEL: Can we get to it?

19 MR. HOLT: Okay.

20 (Pause.)

21 BY MR. HOLT:

22 Q (Reading)

23 "When he used it without your
24 knowledge, did you ever say to him
25 you need to pay me \$12 an hour?

92

1 "Answer: I said I will charge you
2 rent."

3 "You did?"

4 "Yes."

5 "And how much did you say?"

6 "I have no idea."

7 "You have no idea?"

8 "I have no idea."

9 "Should it be \$2?"

10 And then you said:

11 "When I had a new tenant, I
12 establish the price."

13 So is that when you decided to charge \$12,
14 is when you got Diamond Girl?

15 A Maybe, yes, because this is the value of

16 my space; it have a value for it. I must have a
17 good reason when I ask -- I say one word, I have to
18 have rely on something.

19 If I have Diamond -- wait a minute.

20 Diamond Girl is willing to pay me 12, and they did pay
21 me 12. Then let's establish because of the location.
22 I'm renting it to a businessman; he knows the value of
23 the space. And why Wally ignored it? There is no such
24 \$3 anymore.

25 Q Okay. So in 1992 when you had this

93

1 conversation with Wally about renting the store, you
2 didn't tell him \$12 a foot, did you, in 1992?

3 A No. Maybe not.

4 Q Okay.

5 A I say, "You have to pay rent."

6 Whatever -- look, whatever reasonable rent at that
7 time, he have to pay.

8 Q All right. And then in --

9 A I have the final word.

10 Wait a minute. I have the final word, not
11 him, not his father. Besides that, I own the property.
12 They agree on record, both of them. I have the -- I am
13 the one who running the show for Plaza Extra. I care.

14 I will be shamed if we bankrupt. I will be shamed if
15 we losing money. I will be shamed if I stealing. But
16 I'm not that type of person.

17 Q Okay. Well, you already testified that
18 your conversation was with Wally in 1992, correct?

19 MS. PERRELL: Objection. The timing I
20 think you're saying '92. I'm not -- I think that
21 you're misstating the date, but --

22 MR. HOLT: I'm sorry. 1994. That is
23 correct.

24 BY MR. HOLT:

25 Q So you said you talked to Wally in 1994,

↑

94

1 correct?

2 A I talked to Wally when I see him breaking
3 the wall.

4 Q Okay. And he's the only person you spoke
5 to?

6 A It's the only man I talking to.

7 Q Okay.

8 A I don't talk to nobody else.

9 Q All right. And then when you signed the
10 lease with Diamond Girl in 2001, did you tell Wally
11 that you were gonna make him pay \$12 rent for all

12 the back years?

13 A I didn't have to tell Wally. I don't have
14 to tell Wally. Wally agree, he and his father, I
15 have the final word in running the Plaza Extra East
16 and West and St. Thomas.

17 Q Okay.

18 A And he was running his business under my
19 name. He have no say in the company,
20 Mohammad Hamed. But because he's my partner, I was
21 consulting with him with any 'lil move I make. But
22 when anything is reasonable, I let him aware of it.
23 I never did anything behind his back. But this man
24 trying to thief my two locations. No.

25 Q Okay. So now, we've gone over the letter

↑

95

1 from Nizar in May of 2013, Exhibit Number 2.

2 Could we just have that back in front of
3 witness.

4 Do you know --

5 MR. HERPEL: We don't have the right
6 exhibit number. What was that?

7 MR. HOLT: It's Exhibit B. I apologize.
8 Exhibit Number B.

9 BY MR. HOLT:

10 Q Do you see Exhibit B?

11 A Yes.

12 Q Is that the first time you ever had
13 anybody write to anyone --

14 A Never.

15 Q Let me ask the question. Is that the
16 first time that you ever had anyone write a letter
17 to the Hameds saying the amount of rent you intended
18 to charge for Bay 5 and Bay 8?

19 A No. This is a mistake to charge \$12 for
20 8. It is wrong.

21 Q Okay.

22 A I don't know who wrote this. I will never
23 write it 12.

24 This one, yes. I have a tenant who took it
25 for 12.

↑

96

1 This one, I have proof of 6.15. I don't have
2 proof for the 12. So whoever put 12 just did it on his
3 own, on his own.

4 There's no signature of mine on this sheet of
5 paper.

6 Q So do you have any documents in your
7 possession show that you ever asked the Hameds or

8 the Plaza Extra Supermarket to pay rent prior to
9 that date in May of 2013? Any other written
10 documents?

11 A I don't know.

12 Look, I know the man have to pay rent; I know
13 that. Even he could be anybody, he has to pay rent.

14 I don't have nothing free. Free on what
15 basis?

16 Who is Mohammad Hamed or who is his family to
17 give them something free? What favor they ever did for
18 me?

19 I am the one who did the favor for them. I'm
20 the one who brought them to this island. I'm the one
21 who mortgaged my house and my property to do business
22 for them. I am the man who have experience in running
23 a supermarket, not Mohammad Hamed or not Wally.

24 Q All right. So now, looking at this
25 letter -- I'm sorry.

↑

97

1 MR. HOLT: Could I have the witness shown
2 Exhibit J.

3 (Plaintiff's Exhibit J marked for identification.)

4 BY MR. HOLT:

5 Q Do you see where it says:

6 "Bay Number 8 -- The rent claimed
7 for this Bay was never agreed to,
8 as the items stored there were
9 removed from a space in a trailer
10 where everything was just fine"?
11 Do you see that?

12 A I have never seen this letter; never given
13 to me.

14 Q No?

15 A No. This never given to me.

16 Q You didn't see this at your deposition?

17 A Whatever my deposition is, it is there; it
18 is fact.

19 Q Okay. And then --

20 A But don't tell me you show me something
21 giving you the total of 793, and it have no
22 breakdown, and I approving the 793 make up from this
23 page.

24 Q All right. And then the last sentence in
25 this letter says:

↑

1 "In any event, these items will be
2 removed from Bay 8 to the second
3 floor of the store since your

4 client know wants to charge rent

5 for the space."

6 Do you see that?

7 A It's always -- I always charging rent.

8 This is a made-up from you, not from Wally, from

9 you.

10 Q Yeah, I wrote this letter.

11 Now, you see the last sentence on --

12 A I'm telling you, it is from you. Just

13 like you made Mohammad Hamed give me a guarantee for

14 30 years that he owe nothing. You's not a decent

15 lawyer; I could tell you that. I'm sorry to say

16 this, but you're wrong. You went ahead as a lawyer,

17 well-known lawyer, working with my partner, giving

18 him -- you know he own nothing in his name and you

19 make him guarantee a lease of 30 years --

20 Q All right. Mr. Yusuf --

21 A -- and you know damn well he and his

22 children knows he have cancer. And now the man is

23 died, they taking my place, with no -- with no

24 increase in rent for 30 years.

25 Q Okay. So --

↑

99

1 MS. PERRELL: Mr. Yusuf, if you could just

2 answer the question that Mr. Holt is asking you,
3 that way we can, you know, keep this focused. This
4 is just about the rent issue.

5 THE WITNESS: Listen --

6 MS. PERRELL: I understand. I'm just
7 asking you --

8 THE WITNESS: Listen, it seems to me he
9 don't want to understand when I tell him I was not
10 on St. Croix. He's big enough to understand what I
11 mean. And somebody next to him will answer you.

12 You want me speak something and you want to
13 hold me to it.

14 MS. PERRELL: Okay.

15 THE WITNESS: I was working in St. Thomas.

16 BY MR. HOLT:

17 Q All right. Mr. Yusuf, when your lawyer
18 writes me a letter, I can't call you up. You now
19 have you a lawyer, so I can only communicate through
20 your lawyer.

21 Your lawyer wrote me a letter on May 17th
22 and I responded.

23 And my question goes to the last sentence
24 of Paragraph Number 3. It says:

25 "In any event, these items will be

1 removed from Bay 8 to the second
2 floor of the store since your
3 client now wants to charge rent for
4 this space."

5 Do you see that language?

6 A The rent is from day one, Attorney Holt.

7 Q You see --

8 A This is a make up story. The rent is from
9 day one. I don't need a letter from you. Even if
10 you give me a hundred letter, there's a commitment
11 from Mohammad Hamed that he have to pay rent for
12 Bay 8 and Bay 5. You can say whatever you want to
13 say.

14 Q Okay. And Mr. Yusuf, isn't it true that
15 after Nizar sent the letter -- Attorney DeWood, I
16 should say, sent the letter and I responded, they
17 removed the items out of Bay 8, didn't they?

18 A Repeat the question, please.

19 Q As soon as you told the supermarket that
20 you were going to charge them rent for Bay 8 in May
21 of 2013, they moved all the items out, didn't they?

22 MS. PERRELL: Objection; misstates the
23 testimony.

24 THE WITNESS: They took it out? Okay. At

25 least it's clear. That's it. The agreement is

101

1 gone.

2 When he empty it, I did not charge him after

3 he emptied the premises.

4 BY MR. HOLT:

5 Q And your claim is to May of 2013, isn't

6 it?

7 A Look, I charge him as long as he have

8 brother inside my building.

9 Q And as soon as they knew that --

10 A I don't like to charge him for anything if

11 he own nothing in there.

12 Q All right. Mr. Yusuf, if you could look

13 at Exhibit Number K.

14 MR. HERPEL: Our 10?

15 MR. HOLT: Plaintiffs' K.

16 MR. HERPEL: I'm sorry.

17 (Plaintiff's Exhibit K marked for identification.)

18 BY MR. HOLT:

19 Q Mr. Yusuf, this is the April 25, 2013

20 Order from Judge Brady where he found that there was

21 a partnership and took certain actions.

22 Do you recall that?

23 A Maybe I saw it. What happened?

24 Q Okay. Do you recall Judge Brady issued at
25 TRO, or the prelim injunction, and found there's a

102

1 partnership?

2 MS. PERRELL: Objection. I believe
3 that -- wait. Wait. Wait, Mr. Yusuf.

4 Objection. The document speaks for itself.
5 You're asking Mr. Yusuf to comment as to legal
6 findings. This was early on, a TRO finding. So I
7 would object that that misstates what it is. The
8 document speaks for itself. I'm not sure if Mr. Yusuf
9 can adequately respond.

10 BY MR. HOLT:

11 Q Mr. Yusuf, during the preliminary
12 injunction proceedings, was Nizar DeWood one of your
13 lawyers?

14 A Yes.

15 Q Okay. And isn't it true that the letter
16 he sent on May 17th, 2013, just three weeks after
17 the Court's finding, was sent by you because you
18 were mad because you lost that case?

19 A Mad for what? Mad for what? A judge,
20 with respect to that judge, agree with it. I say,

21 here, I don't want to move one day as a partner. I
22 want to split. I was not hungry to the Hamed
23 family.

24 Q All right.

25 A If they want to move after the agreement

103

1 we have, I'm out, and I'm very, very happy. I am
2 very happy that I'm by myself.

3 And I will show Mr. Wally five, six years
4 down the line where he stand financially and where I
5 stand.

6 Q So you were mad at me a minute ago for
7 representing Mr. Hamed. But the truth is, you're
8 glad I did it, aren't you? You're free, right?

9 A No. No --

10 MS. PERRELL: Objection.

11 Wait, wait, wait. Mr. Yusuf -- Mr. Yusuf --

12 MR. HOLT: I withdraw the question.

13 Your Honor, it's 12:40. I may be done, but
14 what I'd like to do is just take a brief break and look
15 at my notes and come back and maybe end with Mr. Yusuf
16 and we could take a lunch break. Is that okay?

17 THE COURT: Yes.

18 MR. HOLT: All right. I just need like a

19 five-minute break and then I'll come back. I don't
20 know if we'll have follow-up, but we'll try to be
21 done at least with Mr. Yusuf before the break.

22 THE COURT: Thank you. We can have a
23 five-minute break.

24 (Off record.)

25 MR. HOLT: Your Honor, I don't have any

104

1 more questions.

2 I just want to make sure my exhibits are in.
3 A, B, C, D, E, F, G, H, I, J, K. A through K.

4 THE COURT: And the Deposition?

5 MR. HOLT: Well, I think he answered the
6 question, so ...

7 MS. PERRELL: Attorney Holt, just to be
8 clear, your exhibits, did you reference every single
9 one of those exhibits or are you just moving them to
10 be in?

11 MR. HOLT: I asked about --

12 MS. PERRELL: I don't recall referencing
13 all of them. And if you want to do that, I'm okay,
14 because I could just do it with all of mine. I just
15 wasn't sure exactly what the process was that you
16 and I were wanting to accomplish, or what the judge

17 would prefer.

18 To me, I would agree, let's put them all in
19 just so we've got them. But I don't know how the Court
20 wants to handle it.

21 THE COURT: I would confirm that he used
22 Exhibits A through K and O in his questioning in
23 reference. The others not listed or identified were
24 not noted.

25 MR. HOLT: I have no other questions of

↑

105

1 this witness.

2 MS. PERRELL: Okay.

3 THE COURT: You have any redirect?

4 MS. PERRELL: I have some short -- yes,
5 Your Honor, very short redirect. And I know we're
6 probably -- everyone's getting close to a lunch
7 break. I will do whatever the Court would like,
8 whether to do that now or whether you'd like to do a
9 break. Let me know how you'd like to proceed.

10 THE COURT: If you do the short redirect,
11 then Mr. Yusuf can be excused if he wants to go, and
12 then we can start with a new witness afresh.

13 You can continue.

14 MS. PERRELL: Okay. So I'll go ahead and

15 proceed. And I'll try to keep it less than, you
16 know, ten to 15 minutes, and at 1:00 o'clock we'll
17 maybe figure that out. Okay.

18 THE COURT: All that you can.

19 MS. PERRELL: I'll do everything I can.

20 REDIRECT EXAMINATION

21 BY MS. PERRELL:

22 Q All right. Mr. Yusuf, I don't want to
23 rehash everything we've already discussed, but I do
24 want to talk about a couple of things to just
25 clarify.

↑

106

1 Can I ask you to look at their Exhibit F.,
2 and the page I would like to direct you to is the
3 one with the Bates number that says FBIX and it ends
4 in 825.

5 A Yes.

6 Q Okay. Attorney Holt asked you a few
7 questions about this page, and without going all
8 back through this again -- we're trying to move this
9 along -- where it says, "Bay 5" and then it says
10 "Vacant," do you see it also indicates Plaza Extra?

11 A Yeah. This is your exhibit. Yeah, I
12 believe that's what he mean.

13 Q Okay. And so assuming the document is
14 something prepared by some of these accountants
15 internally and July of 2001 is correct, does this
16 comport with your recollection that Plaza Extra was,
17 in fact, utilizing that space, Bay 8, at that time?

18 A Yes.

19 Q Okay. And if it was otherwise
20 available -- let me ask you this.

21 Was it otherwise available for rent to an
22 outside third party? Weren't you trying to get an
23 outside third party to rent it?

24 A Yes. If I find someone wanted to pay me
25 the right rent, I will let him have it. I really --

↑

107

1 remember now, 5 is my property. If I lose on 5, I
2 am the only loser.

3 Q Right.

4 A And if I make any money on 5, I'm the only
5 one making money. And --

6 Q And so --

7 A -- it is for rent, but I been forced by
8 Wally to break my wall and put me under pressure to
9 surrender, but I said until I find a tenant. When I
10 find a tenant, then I book him for the rent.

11 THE COURT: Mr. Yusuf, please just answer
12 the question.

13 THE WITNESS: Yes. Yes. Okay.

14 BY MS. PERRELL:

15 Q Okay. So just to clarify, Bay 5 was
16 available for rent, meaning it would be available
17 for any outside third party; is that correct? And
18 once you found someone; is that correct?

19 A Maybe my son can answer that.

20 Q Okay.

21 A 'Cause I'm in St. Thomas. I don't want to
22 interfere with everything. I am the one not in
23 charge of this. This man, when he break it, he put
24 me under pressure to accept it. He already tear
25 down the wall.

↑

108

1 Q Okay. Mr. Yusuf, this document, it's very
2 clear that the partnership was to pay for the store,
3 which is Bay 1, correct?

4 A Yes.

5 Q Okay. And is Bay 1 listed anywhere on
6 this document?

7 A No.

8 Q Okay. And isn't it true that, in fact,

9 United -- the partnership has paid millions of
10 dollars in rent to United -- I'm sorry -- yes -- to
11 United for Bay 1?

12 A Yes.

13 Q Okay. And that's not showing as an
14 accountant receivable on this document either, is
15 it?

16 A No.

17 Q Okay. And at no point in time was the
18 Plaza Extra store going to ever be expelled from
19 Bay 1; is that right?

20 A I don't understand the question.

21 Q Bay 1 was not available to rent to anyone
22 else, correct?

23 A No, because we was using it.

24 Q Correct. But Bay 5 and 8 would be
25 available to anyone else if you found someone,

↑

109

1 correct?

2 A Well, I could say yes and no. Sometimes
3 warehouse is way too full and business is booming,
4 I'll maybe hold onto it.

5 Q Okay. But if somebody came in --

6 A But I really don't like to have it --

7 Q Okay.

8 A -- as a warehouse. Simply, I don't want
9 it as a warehouse. He force me to put it as a
10 warehouse, Wally.

11 Q Right.

12 A I said, okay, 'til I find a tenant.

13 Q Right.

14 A But I don't want a warehouse.

15 Q Right.

16 And my point -- if we can just --

17 My point, Mr. Yusuf, is that if you found
18 a tenant, you could expel at any point in time the
19 use of the Bays 5 and 8 by the store, correct?

20 A Yes.

21 Q Okay.

22 A Okay, if I find a tenant. If I don't find
23 a tenant, it does not mean he can own my property,
24 Wally, he can occupy it.

25 Q Okay. Mr. Yusuf, with regard to --

↑

110

1 Attorney Holt showed you a letter, and Attorney Holt
2 showed you an original Complaint relating to Bay 5
3 and 8 with numbers in there that I think you
4 testified were not the correct rent numbers for

5 Bays 5 and 8. Do you remember that?

6 A It's not -- on 8, yes, but not on --

7 On 8, no; and 5, yes.

8 Q Okay.

9 A You have 8 for 16.15, is wrong. He have
10 it 12 for 5 is right.

11 Q Okay. Mr. Yusuf, I'd like to ask you to
12 look at Exhibit 1, which are the documents that we
13 provided, Exhibit Number 1.

14 A Yes.

15 (Defendant's Exhibit 1 marked for identification.)

16 BY MS. PERRELL:

17 Q All right. Exhibit Number 1 is a document
18 that was filed in this case for United and for you,
19 Yusuf, as a partner, and one of the claims is for
20 the rent, Bays 5 and 8, and that is included on
21 page 9, paragraph 2. Do you see that?

22 A Uh-huh. Yeah, this is exactly what I --

23 yeah, that's the breakdown I have here --

24 Q Okay. And then --

25 A -- on this letter.

↑

111

1 Q Correct.

2 And then, Mr. Yusuf, you see that it also

3 references your Declaration there, right? It says,
4 "See Yusuf Declaration." And that's your Exhibit 2,
5 which we talked about earlier. Do you recall that?

6 A I don't understand the question. No. I
7 have to understand the question for me to answer
8 that.

9 MR. HERPEL: He does not understand your
10 question.

11 MS. PERRELL: I know. Let me back up.

12 BY MS. PERRELL:

13 Q Could you look at Exhibit 2.

14 A Yes.

15 Q Okay. Exhibit 2 is a declaration that you
16 prepared in 2014.

17 A Yes.

18 Q Okay. And you've already testified that
19 you make the claim here for the amounts for 5 and 8
20 and how you determined the calculation, correct?

21 A Yeah, what number?

22 Q Paragraph 22, 23, and 24.

23 A Yeah, I have it.

24 Q Okay. And so --

25 A That's correct.

↑

1 Q Okay. And I believe you've already
2 testified that this was -- you had gone through
3 that.

4 The letter that Attorney Nizar sent, is it
5 your testimony that, yes, you were making a claim
6 for the rent, but he had the calculations incorrect?

7 A This is my calculations here, and this is
8 what I signed for, and this is what I willing to
9 honor. Whatever my lawyer wrote, as he wrote, he's
10 not representing me if I'm not aware of it; I cannot
11 honor it.

12 Q Okay.

13 A Like the other lawyer, he putting me a
14 large sum of 793, and it doesn't agree; this is
15 wrong. The 793 came based on these three schedules
16 or this declaration.

17 Q Okay.

18 A This is explained by itself. It have
19 three spaces totaling 793. The other one is only
20 two spaces totaling same, 793. Something is wrong.

21 Q Right.

22 Okay. So, Mr. Yusuf, let me ask you this.
23 Mr. Holt asked you questions about -- sorry.
24 Attorney Holt asked you questions about why is there
25 no documentation. So let me back up and ask you



1 this.

2 Do you have any documentation for the
3 lease for Bay 1?

4 A There is no leases on 1, there is no
5 leases on 5, there is no lease on 8.

6 Q Okay.

7 A No --

8 Q But with regard to Bay -- let me try to --
9 we're trying to keep it tight here, Mr. Yusuf.

10 So with regard to that, the Courts have
11 already determined that you were owed rent for Bay 1
12 in significant amounts of money, for millions of
13 dollars; isn't that true?

14 MR. HOLT: Objection; relevance.

15 THE WITNESS: I get paid for Bay 1.

16 BY MS. PERRELL:

17 Q Right. Okay.

18 THE COURT: Just a minute.

19 Attorney Holt?

20 MR. HOLT: I'm just trying to keep it
21 limited. I don't think -- I think it's beyond the
22 scope of my direct; it's also -- I don't know what
23 the relevance of Bay 1 is to this.

22 THE WITNESS: That's what I based -- I
23 based my rent based on that.

24 MS. PERRELL: Okay. I have nothing
25 further, Your Honor.

115

1 MR. HOLT: Nothing further, Your Honor.

2 THE COURT: Thank you very much.

3 How much time do you need for lunch?

4 MR. HOLT: Twenty minutes, thirty minutes.
5 Whatever Your Honor would like to do.

6 MS. PERRELL: I think thirty minutes
7 works, Your Honor, if that's okay.

8 THE COURT: All right. A recess until
9 1:30. Recess for lunch.

10 MS. PERRELL: Thank you, Your Honor.

11 MR. HOLT: Your Honor, can you stay on for
12 a second, off the record?

13 (Off record.)

14 THE COURT: Okay. We're now on the
15 record.

16 You may proceed.

17 MS. PERRELL: All right, Your Honor.
18 United would like to call Mike Yusuf.

19 Mike, if you could raise your right hand,

20 court reporter will swear you in.

21 -0-

22 MAHER YUSUF,

23 having been first duly sworn,

24 was examined and testified as follows:

25 ///

///

116

1 DIRECT EXAMINATION

2 BY MS. PERRELL:

3 Q Could you just say your name for the
4 record.

5 A My real name is Maher Yusuf. I go by
6 Mike Yusuf.

7 Q All right. Mr. Yusuf, what store did you
8 primarily work at in the -- well, let me back up.
9 What store do you primarily work at?

10 A At this moment or --

11 Q No. Let me go back in time.

12 In 1992, did you work at which store? Or
13 which store did you work at?

14 A At Plaza East.

15 Q Okay. And how long were you at
16 Plaza East?

17 A I was here until 2000.

18 Q Okay. And were you familiar with the
19 reopening of the store after the fire in 1993, '4?

20 A Yes. I was involved.

21 Q Okay. And in 1994, do you recall when
22 Plaza East was reopened whether or not Plaza East
23 utilized Bay 8?

24 A Yes.

25 Q And what did it use it for?

117

1 A For warehousing the goods for Plaza Extra
2 store.

3 Q Okay. And did it use it continuously?

4 A Yes, it did.

5 Q Okay. And what was your understanding of
6 how long could Plaza Extra, the grocery store,
7 utilize Bay 8? What would ever cause them to have
8 to move out of Bay 8?

9 A The opening of Plaza West.

10 Q Let me ask you this. Did United ever seek
11 to also rent Bay 8 to other third parties?

12 A I didn't hear the question. You were
13 breaking up.

14 Q Okay. Did United seek to rent Bay 8 to
15 third parties?

16 A Yes.

17 Q Okay. And so at what point in time would
18 Plaza Extra ever have to move out of Bay 8, their
19 inventory?

20 A No, we never did move out of 8.

21 Q Okay. If Bay 8 was rented to someone
22 else, would Plaza Extra have to remove the items
23 from Bay 8?

24 A Yes. Yes.

25 Q All right. And my question is the same

↑

118

1 for -- let me ask you this. Was there a point in
2 time in which Bay 5 was utilized by the store?

3 A Yes.

4 Q Okay. When was that?

5 A Looking at the records, it was from '94 to
6 2001, I believe.

7 Q Okay. And do you recall the circumstances
8 that led to the use of Bay 5?

9 A Yeah. We were tight on space. The
10 warehouse for Plaza East was not big enough, and we
11 were forced to use the space.

12 Q Okay. What happened? How did it come
13 about that you started using Bay 5 -- that the store

14 started using Bay 5?

15 A I believe we -- it was a space for rent
16 with a storefront on it, and I believe at that time,
17 because it was in the warehouse of Plaza East, the
18 wall between Bay 5 and Plaza East was just a block
19 wall, and we decided -- or Wally and I decided to
20 put a hole in the wall for a purpose to enter and
21 put a few products, and we ended up using the whole
22 warehouse, the whole store.

23 Q Okay. Let me ask you to take a look at
24 Exhibit 7.

25 A Yes.

↑

119

1 Q Okay. Exhibit 7. Where on Exhibit 7 --
2 can you describe where you knocked through the wall,
3 you and Wally knocked through the wall.

4 A Well, right in the corner, right below the
5 arrow a little bit. A little below the arrow --

6 Q Okay.

7 A -- facing the store. That was the
8 warehouse for the store.

9 Q Okay. So that little section to -- we're
10 looking at it -- would be maybe behind the Bays 2, 3
11 and 4. That's the warehouse component of the

12 Plaza Extra store?

13 A Yes.

14 Q Okay. So then you busted through near
15 where the arrow is in the back part; is that
16 correct? -- to go into Bay 5?

17 A Correct.

18 Q Okay. And how large was the opening that
19 you made?

20 A Enough to -- I mean, it was enough to
21 drive forklift and product through there.

22 Q Okay. And when you did that, did you --
23 was the space -- what was the condition of the space
24 when you guys broke through the wall?

25 A Well, it was fairly ready because it had

↑

120

1 the ceiling grid, the drop ceiling grid, the
2 framing. I believe it had some ceiling tiles in it.
3 We took all the ceiling tiles and packed it, I
4 believe, in the back, on top of the bathroom. And
5 that bay also had sprinkler system and it had a --
6 not -- what do you call it -- vinyl tiles on the
7 floor.

8 Q All right. And at the time that you broke
9 through, would it have taken -- you know, could it

10 have been available for rental retail space at that
11 point, before you broke through the wall?

12 A Yes. Yes.

13 Q Okay. All right. Do you recall whether
14 Mr. Yusuf, your father, became concerned about what
15 you guys had done to use that space?

16 A Yeah. I believe -- I remember he was
17 pissed off at Wally, and I kind of like, you know,
18 stepped in with Wally. So I don't know what
19 transpired or whatever, but I know he was highly
20 pissed.

21 Q Okay. For the purposes of a court
22 proceeding, we'll use "highly angry."

23 So during the time -- just to go back. Do
24 you recall when it was that you guys broke through
25 the wall? You may have answered this; I apologize

↑

121

1 if you had already said that. Do you recall the
2 timing?

3 A Yeah. I believe, you know, right after we
4 opened the store. Right after we opened the store
5 in '94; I don't know what month or day.

6 Q Okay. All right. And the time that you
7 broke through with Wally and began using it for --

8 was it for primarily inventory of the store?

9 A Mostly -- I know what we mostly used it
10 for was sodas. We had an issue with sodas because
11 the sodas take up space, and we cannot double stack
12 sodas. And, you know, trailer loads of soda, when
13 we get sodas from Coke or Pepsi or on the mainland,
14 different sodas, we had to use that because we can't
15 double stack sodas, and there's so much flavors. So
16 we had a problem on the sodas and drinks and all
17 that, so we utilized that space for that.

18 Q Okay. And so from the time that you
19 started using it for that, did you use it
20 continuously until an outside tenant came to rent
21 it?

22 A Yes.

23 Q Okay. All right. At one point there was
24 some statements made by the opposing side that it
25 was used off and on, and I'm talking about Bay 5.

↑

122

1 Would you describe the use as off and on when you
2 were using it for the sodas and the inventory or
3 continuous?

4 A It's no way you could use a warehouse off
5 and on; it's not -- you don't put ten pallets and

6 move ten pallets. This thing was stored, packed to
7 the ceiling. I mean, at some point we had to
8 reorganize it all the time because it didn't have
9 the space, and we did it in a way that the carts
10 could fit in between the aisles for the sodas so
11 they could pick, you know, from each pallet the
12 different flavors and go out with it. And it
13 just -- you can't just empty it in a day; there's no
14 way.

15 Q With regard to Bay 8, can you describe the
16 condition of Bay 8 when the store reopened.

17 A Bay 8 used to be a hardware store, so it
18 was -- they had shelving on both walls, and in the
19 middle was -- I think the tenant that was there took
20 the gondolas in the middle, out. So it was
21 basically -- I don't remember if it had vinyl tiles
22 on the floor, but I know it did not have a drop
23 ceiling as Bay 5. It did have two bathrooms in the
24 back. It did have a storefront in the front. It
25 was a workable store, you know, before they vacated,

↑

123

1 the tenant before.

2 Q Okay. And what was the entry from the
3 back of it like? When you were entering it from the

4 outside in the back where the arrow is on that
5 Exhibit 7, what was that entry like, or what entries
6 were available?

7 A It was a roll-up door. It always had a
8 roll-up door there.

9 Q All right. And so was it an easy space to
10 utilize for warehousing?

11 A Yes. It was perfect.

12 Q Okay. All right. In addition to Bay 5
13 and 8, were there some containers that the
14 Plaza Extra East store was using in the May 2000 --
15 I'm sorry -- May 1994 through the early 2000 period?

16 A Yes. I don't know what period we had the
17 containers. We had the containers way in the back
18 up this sketch here that we have where it says -- it
19 shows the arrow north --

20 Q Uh-huh.

21 A -- way in the back there against the --
22 because we're -- it's like a hill, and we were dug
23 down a little bit lower, so it's kind of in a
24 culvert there.

25 So we had four 40-foot containers and another

↑

124

1 four containers stacked on top of four. So there were

2 a total of eight containers.

3 Q Okay. And was the Plaza Extra East store
4 utilizing the eight containers, Bay 8 and 5 for
5 storage and inventory in the May --

6 A I believe so. I believe so, at that time,
7 or the containers came in later. I'm not sure what
8 year, but I know at one point we had this spot out
9 there.

10 Q Okay. All right. Did you ever have any
11 discussions with Wally or any of the Hameds
12 regarding the rent, or was that something that you
13 left to your father for Bays 5 and 8?

14 A My father is the one who always dealt with
15 Mr. Mohammad on rent or anything to do with the
16 store.

17 Q Okay. All right. And if he didn't speak
18 with Mr. Mohammad, would he --

19 Your testimony is -- did you have any
20 conversation with anyone on the Hamed side --
21 because obviously Mr. Mohammad wasn't there after a
22 while -- but did you have any conversations with
23 anybody on the Hamed side relating to rent that
24 might be due to United or for Bay 1, 5, or 8?

25 A No, I never discussed rent with them. No.

↑

1 Q All right. Did you have an understanding
2 in your communications with your father that the
3 partnership was to pay rent for Bays 5 and 8?

4 A Yes. As far as I recollect, yes.

5 Q Okay. And did you have any understanding
6 as to when it was that -- let me ask you this.

7 Did Mr. Yusuf, your father, discuss with
8 you when it is that he would seek to recover back
9 rent, or did he discuss that at all with you?

10 A No. I don't recall.

11 Q All right. You're currently working at
12 the Plaza Extra East store; is that correct?

13 A Yes.

14 Q Okay. And Mr. Yusuf, your father,
15 described a little bit of the warehousing needs for
16 the current store. Can you just give us some
17 understanding of how much warehousing is needed for
18 the current Plaza Extra East store.

19 A The Plaza Extra East store is -- the
20 warehouse for it is too small for the size retail
21 store it has.

22 Remember, we have to bring all these goods
23 from the mainland, and you bring them in 40-foot
24 containers. You need space. Some things we buy in

25 trailer loads -- one item we buy in trailer loads, and

126

1 sometimes we buy -- we have a trailer load and we have
2 a second trailer load coming before it finishes because
3 we don't want to be out of the product. So we need
4 warehouse space. If you want to be successful, you
5 have to have warehouse space that's sufficient enough.

6 Q Okay. And so is it, in your opinion, that
7 the partnership benefited by having the use of
8 Bays 5 and 8 during that timeframe, 1994 through the
9 various timeframes that the store was using it?

10 A Yeah. Of course. I mean, if we didn't
11 have that space, I don't know what we would do for
12 storage. It will be a chaos, because, I mean, at
13 that time -- I believe at that time the refinery was
14 booming. The island was booming, and we were doing
15 better and better every year, so we needed space as,
16 you know, so we can keep our customers.

17 Q All right. With regard to -- there was
18 some questions about a gentleman named Larry Luff.
19 Do you recall him?

20 A Larry Luff, no. I don't think it's
21 Larry Luff; I think it's Thomas Luff.

22 Q Thomas Luff. Sorry. I know a Larry Luff.

23 So I apologize. A Thomas Luff.

24 A Yes.

25 Q Okay.

127

1 A Yeah, I remember him.

2 Q Okay. And did you ever discuss with him
3 any of the arrangements for the partnership for
4 Bay 1 or Bay 5 or Bay 8?

5 A No, we never discussed anything with him
6 about anything to do with Plaza Extra or what we --
7 you know, nothing. No.

8 Q Okay. All right. Did you ever review any
9 records that Mr. Luff may have prepared relating to
10 the United tenants or the tenant accounts?

11 A No. The only record I would say I look at
12 is to see whose tenant is behind on rent and who
13 owes rent and stuff like that; but otherwise, never
14 go through -- you know, he just gives me a ledger of
15 what's vacant and what's not, what's been rented.

16 Q Okay. And did you have any input into
17 where or how the \$5,408,000 check was accounted for?

18 A Yeah. It was based on St. Thomas store
19 and used St. Thomas store to put the basis of rent
20 for the St. Croix store. It was just store against

21 store.

22 Q Right. No, what I'm asking is, is --
23 well, let me back up.

24 The claims that United is making for
25 Bays 5 and 8, the total claim is 790 and some odd

128

1 thousands; is that correct?

2 A I believe that's what I saw, yes. I think
3 so. Yes.

4 Q Okay. And so United has never made a
5 claim for millions of dollars for Bays 5 and 8 rent;
6 is that correct?

7 A I was not involved in that. My dad is the
8 one who --

9 Q Okay.

10 A -- was involved.

11 Q But as you sit here today, you're not
12 aware that you ever making a claim for Bay 5 and 8,
13 but United is not making a claim beyond the
14 790-some-odd thousand, correct?

15 A Beyond that, no. No.

16 Q Okay. All right.

17 MS. PERRELL: All right. I don't think I
18 have any further questions.

19 MR. HOLT: Okay. Briefly.

20 CROSS EXAMINATION

21 BY MR. HOLT:

22 Q Mr. Yusuf, Mike Yusuf, can you tell me
23 when did you start working in the Plaza East store?

24 A 1990, 1991, I believe.

25 Q The year before the fire?

129

1 A 1990 or 1991. I can't remember.

2 Q Okay. A year or two before the fire?

3 A Yeah, before the fire. Yes.

4 Q Okay. And then the fire took place, and
5 the store was rebuilt, and you were here all that
6 time?

7 A Yes.

8 Q And at the time that the store was built,
9 I take it you also bought additional land behind the
10 store?

11 A Yes, we did.

12 Q Okay. Prior to buying that land -- you
13 bought that land around 1993; is that correct? --
14 1994?

15 A I can't remember the -- I didn't deal with
16 that. My dad is the one who dealt with it. I don't

17 remember the date. I don't remember the year or
18 date.

19 Q Prior to buying that land, was there ever
20 a set of eight trailers located on that land that
21 Plaza East used before that land was purchased?

22 A Prior to what, buying the land?

23 Q Prior to the fire, did you ever have a
24 stack of trailers behind the store that you used for
25 storage, or was that after the fire?

↑

130

1 A No. I believe that was after the fire.

2 Q And then after the fire, you're working in
3 the store with Wally, what is your job title?

4 A My job title was -- I don't know. It was
5 everything. I worked under Wally.

6 Q All right. And you worked in that store
7 until 2000?

8 A I worked in that store until -- in the
9 Plaza East store, you said until 2000?

10 Q I think that's what you testified. I'm
11 just trying to clarify.

12 A Yes. Yes.

13 Q Okay. And then after 2000, you moved to
14 Plaza West; is that correct?

15 A Correct.

16 Q You are the manager of that store?

17 A Yes.

18 Q And once you were the manager of that
19 store, did you come to Plaza East everyday?

20 A Yeah, most -- yeah. Most of the times,
21 yes.

22 Q Okay. Were you there enough to know
23 whether or not they actually utilized Bay 5 or
24 Bay 8?

25 A If I was there -- no. You know, I was at

131

1 the store, but I came in the evenings.

2 Q Okay. So you don't know after you left
3 the store in 2000 whether they utilized Bay 5 or
4 Bay 8?

5 A No. I know we were using the warehouse.
6 The warehouse is in the shopping center, but I
7 didn't physically go back there. I mean, I've been
8 to the back and -- no, I've been physically back
9 there. Yes, I been back there, and they been using
10 Bay 8; I remember that.

11 Bay 5, I can't remember Bay 5, but I know
12 it's been used for a long period of time.

13 Q Was it used after 2001?

14 A I can't remember the date, the year,
15 honestly.

16 Q Okay. And then after Plaza West opened,
17 there was a second story on that building. It had
18 lots of storage space, didn't it?

19 A Yes.

20 Q And you actually stored stuff for
21 Plaza East in that second story, didn't you?

22 A Yes.

23 Q Okay. So to the extent that you might
24 have needed space before then, you certainly didn't
25 need space after you opened Plaza West to store

↑

132

1 items at Plaza East, did you?

2 A We did need some space in Plaza East
3 because they always used to say we never send them
4 this, we never send them that. So they used to get
5 a lot of inventory from us and store it in the
6 Plaza East so they don't run out.

7 Q Where did they store it in the Plaza East?

8 A I don't know. I wasn't there for every
9 trailer I sent; I had a store to run.

10 Q Were they utilizing Bay 5 for some of the

11 storage after 2000?

12 A I can't -- I wasn't -- like I told you, I
13 wasn't here to see where they stored the product I
14 sent them from Plaza West.

15 Q Okay. Can you tell me whether or not they
16 used Bay 8 at any time after 2000?

17 A I know Bay 8 was used all the time, all
18 the time.

19 Q Was there ever a time after 2000 that they
20 didn't use Bay 8?

21 A After what time is that?

22 Q After the year 2000, when you left.

23 A There was a time that we had a tenant in
24 there named Riverdale.

25 Q Okay.

↑

133

1 A And the period of time that rented the
2 space to Riverdale, I know, you know, Plaza cannot
3 be using it.

4 Q Well, you indicated that you didn't know
5 how the store could operate if it didn't have these
6 spaces. How did it -- what did it do for storage
7 after 2001 and '2 when it didn't have these
8 locations?

9 A '1 and '2?
10 Q 2001 and 2002.
11 (Simultaneous colloquy.)
12 A -- Plaza West.
13 Q Okay. So you don't know --
14 A 2000 -- excuse me.
15 Q After it rented the space to Diamond Girl,
16 it rented Bay 8 to what you called Riverdale, and
17 you said you didn't know --
18 A Correct.
19 Q -- what they would do without the storage
20 space, so I'm trying to figure what did they do for
21 storage space after they rented these two places
22 out.
23 A When did they rent space 5 and 8? I
24 need --
25 Q I'll represent to you they rented Space 5

↑

134

1 in 2001 and they rented Bay 8 in 2002. Those are
2 the leases.
3 A Okay. That's fine. That's -- then
4 Plaza West was open, so we took most of the load off
5 of them.
6 Q And is that how it remained up until the

7 time the stores were split?

8 A No. At one time Riverdale left the space
9 and Plaza East start using the space again.

10 Q When is that?

11 A I think on 8.

12 Q Okay. And did you go up to Riverdale, the
13 warehouse location, after 2008 and see items stored
14 in it?

15 A After 2008, if I saw Plaza Extra using the
16 space after 2008? Yes.

17 Q Why would you have occasion to go up and
18 look at where they're storing stuff since you're the
19 manager of West?

20 A This is my shopping center. United
21 Shopping Plaza is my shopping center, and
22 Plaza East -- I work for Plaza East also. I go and
23 I delivered stuff to East, so I come to the East
24 floor. I picked up stuff for East store, take it to
25 the West store. We take product from both stores

↑

135

1 back and forth, and I don't come through the front
2 door; I go through the back door.

3 Q How do you go up to Bay 8?

4 A Bay 8 is right there, right where the

5 receiving area is for the store.

6 Q And you knew Bay 8 pretty well?

7 A Yes, I did.

8 Q And when Bay 8 was being used by
9 Plaza before Riverdale came, between 1994 and 2002,
10 it's your testimony that there was a bathroom in
11 there?

12 A There was two bathrooms.

13 Q And they were operable?

14 A They had a toilet and it had face basins
15 in it. I didn't use it.

16 Q Was there lighting in there?

17 A We didn't have the power turned on to the
18 place 'cause it was on a meter.

19 Q Okay.

20 A If we have to put it on, that means --

21 Q Okay. So there was lighting in the store
22 of Bay 8, but the meter wasn't turned on; is that
23 what you're telling me?

24 A It had fixtures, if that's what you're
25 talking about, lighting fixtures.

↑

136

1 Q Okay. So Bay 8 had lighting fixtures, but
2 they were not operable because the meter was not on;

3 is that correct?

4 A Correct. But I believe at one point they
5 ran a wire or extension cord or a cord and gave some
6 light to the place, to the fixtures that was there.

7 Q Okay. And did you tell me that there was
8 or was not a suspended ceiling in that store, Bay 8?

9 A Bay 8 did not have a suspended ceiling.

10 Q Okay.

11 MR. HOLT: So could I have the witness
12 shown Exhibit Number 12, Plaintiff's Exhibit Number
13 12.

14 THE WITNESS: Exhibit Number 12, yes.

15 BY MR. HOLT:

16 Q And that's the lease with what you call
17 Riverdale? You see Exhibit Number 12? You see
18 that?

19 A Yes.

20 Q Can you go to page 5 of that lease.

21 A Page what, 5?

22 Q 5, item number 8. You see it says,
23 "Inspection by Tenant." Do you see that?

24 A Yes.

25 Q Now, it says, "Landlord will provide a

↑

1 loading door." Didn't you testify that there was
2 already a loading door there?

3 A Yes, there was a loading door there. Yes.

4 Q Okay. So why would the landlord provide
5 one if there's one already there?

6 A I'm not sure. Maybe it was broken and we
7 had to fix it.

8 Q Then it says, "Landlord will remove the
9 existing suspended ceiling." And you testified
10 there was no suspended ceiling. So why would you
11 move something that wasn't there?

12 A There was no suspended ceiling towards my
13 knowledge, no, that I remember.

14 Q Why's the landlord then removing it in
15 this lease?

16 A I don't know about this writing in there.
17 Unless -- unless -- unless in the front where the
18 office was, or the cashier was, Ali Hardware, they
19 had a small area that (inaudible) --

20 (Reporter clarification.)

21 THE WITNESS: Okay. It was a hardware
22 store, and as you enter from the front glass door,
23 on the left they had -- that's where the cashier was
24 and the service counter or whatever you call it, and
25 in that area, if I recall, they had a small



1 suspended ceiling there. If that's what the lease
2 is referring to.

3 BY MR. HOLT:

4 Q So you think that's what the lease is
5 referring to. They remove the existed suspended
6 ceiling in the small office. Is that what you're
7 thinking?

8 A That's what I'm thinking. That's the only
9 thing I could think of, yes.

10 Q And it says, "will install a working
11 bathroom." Do you see that?

12 A Well, the bathroom was there.
13 Everything -- all the fixtures was in there. That's
14 probably the language of the lease, you know --

15 Q Okay.

16 A -- to make it clear they have a working
17 bathroom.

18 Q But the bathroom that was there before
19 wasn't a working bathroom, was it?

20 A It was working.

21 Q You didn't use it, did you?

22 A I didn't use it, no.

23 Q All right. And then it goes on to say,

24 "and will install warehouse lighting."

25 Now, you testified that it already had

139

1 warehouse lighting, so why are you having to install
2 warehouse lighting?

3 A Maybe they wanted more lighting inside the
4 space.

5 Q So it doesn't say additional warehouse
6 lighting, does it? It says they'll install
7 warehouse lighting, doesn't it?

8 A That language, you know, I didn't go
9 through this lease with whoever prepared it then;
10 you know, did what needed to do. I just took care
11 what the tenant needed. If that's what we agreed
12 to, I didn't have to put it on paper, but if it was
13 on paper, it's good for him.

14 Q If you can just look over on the last page
15 of this lease -- not quite the last page, but over
16 on page 32 of this lease. The signature of the
17 landlord is on this lease, isn't it?

18 A Excuse me?

19 Q The signature for the landlord on this
20 lease, isn't it?

21 A What page you said?

22 Q Page 32.

23 A Oh, here's a date. Yeah, that's my
24 signature.

25 Q And during this time period, your father

140

1 was in St. Thomas and you were in charge of these
2 leases, correct?

3 A Yes, I still in charge of the leases, but
4 I don't read all the leases that my property manager
5 does.

6 Q Okay. Well, then going back to that
7 paragraph A on page 5, would you just go back to
8 that for a second. You got there?

9 A Getting there. I'm here.

10 Q Are those your initials at the bottom of
11 the page?

12 A No.

13 Q That's not your initials at the bottom --

14 A That's not my initials, no.

15 Q All right. So would you agree with me
16 that the rent for a warehouse, the square footage
17 rent for a warehouse would always be lower than the
18 square footage for a retail store space?

19 A It depends on the location of the space

20 and what the landlord wants.

21 Q Would you agree that in 1994 to 2000, that
22 there was warehouse space in the vicinity of
23 Peters Rest at less than \$12 a square foot?

24 A I'm not sure if it had space less than
25 \$12; and if it did, why would we go there?

↑

141

1 Q Well, if you could pay \$8 there and \$12
2 here, why wouldn't you go to the cheaper place?

3 A Because it's secured here, the forklift is
4 here, the receiving person is here, all the manpower
5 is here. Why would I go? I rather pay the rent
6 right nextdoor, a higher rent, and it's -- I can
7 control my inventory; it don't get stolen.

8 Q Did you ever price out what the fair
9 market value of warehouse rent would be in that area
10 during this time period?

11 A No, I didn't. Like I tell you, I wasn't
12 involved with anything to do with rent at that time.

13 Q And you indicated that the conversations
14 about rent would be between your father and
15 Mohammad Hamed?

16 A Mohammad or Wally.

17 Q And did you ever hear them discussing

18 rent?

19 A I heard that they have to pay rent, but
20 never discussed the details.

21 Q And you never heard an amount of rent
22 anybody would have to pay?

23 A I never was -- I never discussed anything
24 about rents with the store or what the store did or
25 anything like that; it was always my dad and one of

142

1 the Hamed family.

2 Q And when was the first time you had the
3 impression that the store would have to pay rent for
4 Bays 5 and 8?

5 A Oh, when my dad was pissed off at us when
6 we broke the wall, said you're going have to pay
7 us -- this place have to pay rent, that I can't give
8 up a good store for warehouse.

9 Q And he made it clear --

10 A We were forced to use it.

11 Q And he made it clear, though, if a good
12 store showed up, that you'd have to get out of
13 there, right?

14 A I don't remember.

15 Q You didn't hear him testify that just

16 earlier today?

17 A Oh, yeah, yeah, yeah, I heard him testify
18 to that, yes.

19 Q Okay. So if he had told you all to put
20 the wall back up and get out of the store, you would
21 have had to get out of there, wouldn't you?

22 A Of course. It's my dad and we all have to
23 do -- it's his call.

24 MR. HOLT: Can I have the witness shown
25 Exhibit Number 2, the letter dated May 17th of 2013

↑

143

1 from Nizar DeWood to me about rent for Bays 5 and 8.

2 BY MR. HOLT:

3 Q You see that?

4 A Yes.

5 Q And did you authorize Nizar DeWood to send
6 that on behalf of United?

7 A No, not me. No.

8 Q Okay. So you don't recall seeing that
9 letter before it went out?

10 A I maybe did, at that time. This is way
11 back. I can't remember.

12 Q Way back in 2013 you can't remember if you
13 authorized this?

14 A No. I don't remember what I ate
15 yesterday.

16 Q Okay. And then do you recall -- now, this
17 is going back in time. Do you recall that when
18 letter was received that the items were promptly
19 removed from Bay 8 to the second floor of the
20 Plaza East store?

21 A After what year?

22 Q Right after this letter was received in
23 2013.

24 A Oh, yeah. Yeah, I remember that.

25 Q Tenant Plaza Supermarket got a letter

↑

144

1 saying they'd have to pay rent. They moved all
2 their goods to another location, didn't they?

3 A No. Actually what we did is Plaza West,
4 they stopped ordering so much merchandise, plus they
5 backed off on a lot of orders.

6 Q So they didn't move any items out of Bay 8
7 after receiving this letter?

8 A They probably moved some stuff, but all
9 you have to do is stop ordering from Plaza West for
10 a while and move some of that stuff someplace else
11 or let it liquidate in two weeks -- two, three

12 weeks, it can go.

13 Q So you could liquidate whatever inventory
14 was in a store like that in two or three weeks?

15 A No, you can't, not -- at that time, after
16 2000 -- after the 2000 -- after Plaza West was
17 opened, that warehouse was not as tight or not as
18 loaded with merchandise like it used to be before
19 Plaza West came involved, 'cause we used to store
20 everything there. But they -- for some reason -- I
21 don't know why -- they feel like they had to use
22 this space and occupy it. They used to buy beer by
23 quantity, Coke by quantity; and several other
24 companies they used to buy, you know, products by
25 quantity and store it there; and we also did the

↑

145

1 same thing in Plaza West.

2 Q Okay. So after --

3 A And when --

4 Q I'm sorry.

5 A So when this letter came out -- when this
6 letter came out, when they did an order for their
7 store, they would say send it to Plaza West, and
8 they would -- and they'll make sure we receive it in
9 Plaza West, and they would sign the receipt in

10 Plaza East. So we were housing their merchandise
11 after this letter much more than the previous years.

12 Q Okay. So I want to come back to some of
13 these questions.

14 So after 2000 when Plaza West opened,
15 there was much less of a need for Bays 5 and 8; is
16 that correct?

17 A Yeah, after a while, yes. Yes.

18 Q And as a matter of fact, the usage of the
19 store and amount of inventory that could be moved
20 within weeks if needed to be; isn't that correct? --
21 because you had most of the inventory out of
22 Plaza West?

23 A After a year or so, the inventory start
24 going down because Plaza West was housing -- until
25 we opened, it took us a while to get, you know, an

↑

146

1 owner in process and getting merchandise to the West
2 store and making the West store the store that
3 houses items. Some things -- if we bought a
4 trailer, it will take us maybe six months to eight
5 months to move up one product.

6 Q All right.

7 A So Plaza West kept all the inventory for

8 Plaza East a year or two years afterwards.

9 Q Okay. So after 2000 when the Plaza West
10 store opened, Plaza East had no need for Bays 5 and
11 8, did it?

12 MS. PERRELL: Objection. I believe it
13 misstates his testimony.

14 MR. HOLT: Okay. Well, let's see if he
15 can answer the question.

16 MS. PERRELL: Objection; asked and
17 answered, too.

18 THE WITNESS: Yeah.

19 THE COURT: You may answer the question.

20 THE WITNESS: Can you repeat it again?

21 BY MR. HOLT:

22 Q After 2000, Plaza East had much less use,
23 or had no use for Bays 5 and 8 because it could
24 store whatever it needed out of Plaza West, couldn't
25 it?

↑

147

1 A I told you earlier that it took us a while
2 for the inventory to go down and for us to get
3 familiarized with everything supposed to go to
4 Plaza West. Plaza West just opened in late 2000, so
5 you can't even consider 2000. So until we got a

6 system going, everything was assigned to house in
7 Plaza West. And then after a while, they depleted
8 Bay 5, and I think after -- I think they kept Bay 8
9 for a while 'cause they had too much merchandise in
10 there, until it went down. And then I guess we
11 rented it after that.

12 Q Okay. Well, let me ask it like this.

13 At 2008, April of 2008, Plaza East had no
14 need for Bays 5 and 8, did it? If it needed to
15 store stuff, it could do it on the second floor of
16 Plaza West, correct?

17 A 2008. Let me get familiar with -- no.
18 The warehouse for Plaza is small.

19 Q So at Plaza West --

20 A You cannot store anything upstairs.

21 Q Okay.

22 A Remember, upstairs is only made -- you
23 cannot store sodas upstairs, you cannot store flour
24 upstairs, you cannot store corned beef upstairs; all
25 this is heavy product; that's a second floor. And

↑

148

1 we didn't have enough space on the bottom floor, so
2 they used Bay 8 when they buy trailer loads.

3 I mean, at one time we bought -- my dad said

4 eight trailers of Bounty. We bought 12 trailers of
5 Bounty between the two stores.

6 Q But Plaza West, half the store is grocery
7 store and the other half is warehouse on the first
8 floor, isn't it?

9 A Plaza West, half -- no.

10 Q What's your percentage between store and
11 warehouse on the first floor of Plaza West?

12 A It depends on what kind of warehouse
13 you're talking about. There's two types of
14 warehouse. We have cold storage warehouse, and we
15 have frozen warehouse, and we have light product
16 warehouse, and we have heavy product warehouse --

17 Q How much of Plaza West --

18 A -- items that are there.

19 Q How much of Plaza West is store part that
20 customers use?

21 A Plaza West, I believe it was 46,000 or
22 44,000 square foot, and the rest of it -- that's
23 walking space for the customers. And I think the
24 rest of it was about 97,000 square foot. So it was
25 more product area, cold storage, frozen storage, and

↑

1 dry storage, generator, receiving dock; all that is

2 included.

3 Q So between 2002, when Bay 8's no longer
4 available, and 2008, where did Plaza East store all
5 of the inventory that it was gonna put in Bays 5 and
6 8?

7 A Most of it went to Plaza West.

8 Q Okay. And then somehow in 2008 Plaza West
9 got so full it couldn't store it anymore and they
10 had to start putting it in Bay 8? Is that your
11 testimony?

12 A That wasn't my testimony.

13 Q Okay. So --

14 A My testimony -- let me repeat my
15 testimony.

16 My testimony was that they were running out
17 of product, so what they were doing is ordering more
18 than one trailer a week and housing -- instead of a
19 housing pallet, because they ran out before the time,
20 they put it in that warehouse. And at one time we
21 bought so much Bounty, we stuck it in there. They were
22 using that as storage.

23 THE WITNESS: You are on mute.

24 MS. PERRELL: You're on mute.

25 MR. HOLT: May I have the witness shown

↑

1 Exhibit Number F.

2 BY MR. HOLT:

3 Q Have you seen this letter before?

4 A I don't recall.

5 Q Okay. So this is a letter -- and you've
6 already indicated you knew who Thomas Luff was?

7 A Yes, I knew who Thomas Luff was.

8 Q He was the property manager?

9 A He was the property manager. Yeah.

10 Q And he addressed this will letter to
11 Fathi Yusuf, not to you, correct?

12 A Yeah. I guess so. Yeah. I see that.

13 Q Did you ever see a letter like this?

14 A Maybe; maybe not. I can't remember.

15 Q Were you running the shopping center in
16 2001 or was your father running it?

17 A It was running by itself.

18 Q So Mr. Luff would just make these reports
19 and put them in a file, or do you think he sent them
20 to somebody?

21 A I don't remember what he was doing with
22 these reports. Can't remember. I can't remember.

23 Q If you could look over on the document
24 that ends with 7825; it's the fourth or fifth page

25 from the back of the document. At the top it says

151

1 "Tenant Accounts."

2 A Yes.

3 Q All right. So you see on that page where
4 it says, "Bay 5, Plaza Extra Vacant. Bay 8" --

5 A Yes.

6 Q -- "Plaza Vacant." Do you see that?

7 A Yes.

8 Q Were they vacant or not?

9 A What year is this?

10 Q July 2001.

11 A Not Bay 8, wasn't vacant.

12 Q Okay. How about -- if you look on them
13 document, it says, "Bay 7 Plaza Extra Vacant." Was
14 that vacant?

15 A Plaza -- looking at this, at one point, it
16 had a small 3-foot by -- a regular door, steel door,
17 the back door of the store, and we used it for a
18 short period of time, just -- I mean, it was the
19 back of one of the stores that we used it. We were
20 just for a little period of time. I, honestly, was
21 just miscellaneous product, I think it was.

22 Q Well, do you know whether or not they were

23 using it in July of 2001, since you were at the
24 other store?

25 A No, I'm not sure if we were using it at

152

1 that time, but I know we used it at one point, but
2 not -- not too long. But, you know, what he put on
3 this paper, I mean, he could do anything and put it
4 on this paper. He's the one who generates this
5 paper.

6 Q Do you think he would make things up?

7 A He would miss-slip stuff, I think, put it
8 in the wrong thing; that's what accountants do; they
9 look for a blank space and they stick stuff in
10 there.

11 MR. HOLT: All right. Your Honor, if I
12 could just take about a two-minute break, because
13 I'm almost out of battery on my computer, and check
14 and see if I've got anything more for him?

15 THE COURT: Short recess.

16 (Off record.)

17 MR. HOLT: I'm gonna have no more
18 questions of this witness whenever he comes back.

19 THE COURT: Any redirect?

20 MS. PERRELL: Yes, just briefly,

21 Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. PERRELL:

24 Q Mike -- I'm sorry. Mr. Yusuf, you were
25 asked a question about -- I believe this is

153

1 Exhibit F, about -- it appears this is a document
2 that was prepared by Mr. Luff. And it says there
3 for Bay 8 and Bay 5, Plaza Extra Vacant. Do you see
4 that?

5 A Yes.

6 Q Okay. And I believe this is what you
7 testified earlier. I apologize if I'm rethreading
8 old ground. But was it that when Plaza Extra was
9 utilizing Bays 5 and 8, that those bays were still
10 available for rent to an outside third party?

11 A Yes.

12 Q Okay. So Plaza Extra didn't -- you know,
13 they could be put out at any time if there was a
14 third party renter coming in; is that right?

15 A Right.

16 Q Okay. And did you ever discuss with
17 Mr. Luff the arrangement that the families had for
18 the grocery store to pay rent to United for Bay 1?

19 A No, no. Never discussed anything with
20 Plaza Extra with Mr. Luff.

21 Q Okay. So it's fair to say you never
22 discussed it. Do you know if your father ever
23 discussed the arrangement regarding Bay 1 with
24 Mr. Luff?

25 A No, we never did.

154

1 Q Okay.

2 A And my dad would not discuss that with
3 him, no.

4 Q Okay. And did you ever discuss with
5 Mr. Luff the arrangement that you understood was in
6 place with regard to Bays 5 and 8 and Plaza Extra's
7 use of those bays?

8 A No, never discussed it with him.

9 Q Okay. All right. And with regard to the
10 use of Bay 8 in the latter part of 2008 through
11 2013, can you explain again -- you said something
12 about there was a particular shipment that you were
13 aware of which is why that bay was reutilized again.

14 A Well, they was running out of product too
15 often, so --

16 Q When you say "they," do you mean

17 Plaza Extra East?

18 A Plaza Extra East. So I believe they were
19 so happy that Riverdale went out, got out of the
20 space, because right away they went ahead and used
21 it to bring product from Plaza West or, you know,
22 from the local suppliers.

23 You know, when you get a deal of one
24 container of Heineken, you can get that deal for both
25 stores. You get it for this store here, and you get it

↑

155

1 for the next store, and you belong to it, and you run
2 that as a special. So that's just one company, and we
3 used to deal with hundreds of companies.

4 So it's an easy access of forklift. It's a
5 big door; it's about 10, 11-foot wide, so it was easy
6 to use it for warehousing Plaza East.

7 Plaza East warehouse is so small compared
8 even to St. Thomas. The warehouse is too small, so it
9 needed some warehouse space. So, you know, that's why
10 we built Plaza West so big, to help Plaza East with all
11 that, to accommodate a lot of inventory.

12 But there's some things you can't run from.
13 If you bring -- if you buy some Coca Cola sodas -- and
14 I forgot how many flavors they have -- you're not gonna

15 take that to Plaza West, and then that means you're
16 going to be out of flavors in the store. So what they
17 do is bring it here to Plaza East.

18 MS. PERRELL: All right. I have no
19 further questions, Your Honor, for this witness.

20 MR. HOLT: I have no additional questions,
21 Your Honor.

22 THE COURT: All right. Thank you very
23 much.

24 MS. PERRELL: I'm sorry, I didn't mean to
25 cut you off.

↑

156

1 At this time the Plaintiffs rest subject to
2 we intend to call, you know, and pursue
3 Cross-Examination, but we're not gonna call anybody out
4 of order. I feel like it makes sense to just allow the
5 opposing side to go forward and we'll just subject to
6 cross.

7 THE COURT: Very well.

8 Attorney Holt?

9 MR. HOLT: Yes. I'll call Wally Hamed.

10 MS. PERRELL: If I could ask everyone to
11 just hold for one moment. My battery is running out
12 on my ear plugs and I just need to switch the

13 speaker. It will take me two seconds. I just don't
14 want you to start.

15 (Pause.)

16 MS. PERRELL: I'm good. Thank you.

17 THE COURT: You may proceed.

18 -0-

19 WALEED HAMED,

20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HOLT:

24 Q Can you state your name for the record,
25 please.

↑

157

1 A Waleed Hamed.

2 Q Can you tell me when you started working
3 at the Plaza East store.

4 A 1986 {sic}.

5 Q And were you working at the Plaza East
6 store in 1992 when the fire took place?

7 A Yes, sir.

8 Q Prior to the fire, were there any storage
9 containers stacked on top of each other behind of
10 the Plaza East store?

11 A No, sir.

12 Q And why not?

13 A Because there was no space back there to
14 do so.

15 Q Okay. Were there containers store there
16 after 1994?

17 A Yes. After partnership bought the one
18 acre in the back of the building and we rebuilt the
19 store, there was enough room to put the containers.

20 Q And that was after the fire?

21 A Yes.

22 Q Okay. You've heard testimony today about
23 a hole being broken in the wall between the Plaza
24 Supermarket and Bay 5. You've heard that testimony?

25 A Yes.

↑

158

1 Q Did that happen?

2 A Yes, it did.

3 Q Now, you also heard that the store opened
4 after the fire around 1994. When did it open?

5 A I believe May 4th, 1994.

6 Q And do you recall when that hole was
7 broken in the wall?

8 A I don't recall exactly, but it wasn't in

9 1994.

10 Q How many years after 1994 would it have
11 been?

12 A Probably -- when we first opened the
13 store, it wasn't overloaded with merchandise. I
14 mean, it took us a while to really build inventory,
15 so we really didn't need any additional space
16 anywhere outside. Probably maybe a year, two years,
17 maybe three years down the road.

18 Q Okay. And when you broke that hole in the
19 wall, did you discuss it with anybody before you did
20 it?

21 A Yeah, with Mike Yusuf.

22 Q Okay. And we've heard testimony today
23 that when you did that, that Fathi Yusuf got angry
24 about that.

25 Did you ever speak with Fathi Yusuf about

↑

159

1 the hole in the wall?

2 A Absolutely not.

3 Q And was there ever any discussion about
4 paying rent for Bay 5?

5 A Absolutely not.

6 Q Now, at that time, were there items in

7 Bay 5, after you broke the hole in the wall, from
8 time to time until Diamond Girl came and rented
9 space?

10 A From time to time, yes, we did utilize the
11 space.

12 Q And tell me about that utilization.

13 A The utilization was either with sodas. We
14 had -- at one time Fathi decided he wanted to take
15 on Heineken Beer that was sold by West Indies, I
16 believe, at the time, and he ordered one or two
17 containers of Bulgarian Beer, it's called; it was
18 similar to Heineken. So he wanted to take them on
19 because he thought that their pricing was too high.
20 So he went and he made the deal; he brought it. And
21 he sent, I think, either one or two containers over
22 to Plaza East so we could store it in that
23 particular location.

24 Eventually, most of that beer, we dumped. We
25 just held onto it, we tried to market it, we tried to

160

1 sell it. We sent -- we did send -- we used to send
2 product from St. Croix, from Plaza East, to Tutu Park.

3 Q So when you would get rid of product,
4 would there necessarily be new product that would

5 take its place?

6 A Yes, yes. Always a rotation.

7 Q Okay. Was the store always occupied after
8 you broke the hole in it?

9 A From time to time.

10 Q Okay. And had you known that you would
11 have to pay rent for Bay 5, what would you have
12 done?

13 A I definitely won't. I mean, that was
14 never the discussion. That was never even
15 mentioned, that we had to pay rent.

16 Q And did you have somewhere else that you
17 could have stored it if you didn't put it in Bay 5?

18 A At the time, if he didn't, we would make
19 accommodations upstairs.

20 You see, everybody is thinking that -- or
21 everybody is stating that Plaza East only had that
22 small space warehouse on the bottom floor. Well, what
23 about the second story that we have at Plaza East, all
24 that empty space up there?

25 Q So let's talk about Bay 8 for a second.

↑

161

1 Were there items that Plaza Extra stored in Bay 8?

2 A Sometimes, yes.

3 Q And from 1994 up until the time that
4 Riverdale got its lease in --

5 A I won't say that it's 1994, but the time
6 after that, it's possible, yes.

7 Q Okay. And would you be in there all the
8 time?

9 A No.

10 Q If you'd known that you'd be charged rent
11 for that, would you have used it?

12 A No, sir.

13 Q Now, Riverdale moved out in 2008,
14 according to its lease. Did you store things in
15 Bay 8 after 2008?

16 A I don't really recall that we did. I
17 mean, when we opened Plaza West in 2000, there was a
18 lot of merchandise that we were able to store at
19 Plaza West because it's a large warehouse. And we
20 would buy in collaboration with Plaza St. Thomas and
21 Plaza West, in trailer loads, and Plaza West would
22 supply Plaza East with certain merchandise per
23 order, and they would supply also Plaza St. Thomas
24 for merchandising that they it be holding.

25 Q So one of the plans in building Plaza West

↑

1 is to have a storage area to feed the other stores?

2 A Yes.

3 (Plaintiff's Exhibit B marked for identification.)

4 BY MS. PERRELL:

5 Q Okay. Showing you Exhibit Number B, this
6 is a letter from Attorney Nizar May of 2013. Prior
7 to receiving that letter, had Fathi Yusuf or anyone
8 else on behalf of the landlord ever suggested to you
9 or your father that the store expected to be paying
10 rent?

11 A For?

12 Q For Bay 5 and Bay 8.

13 A No, sir, never.

14 Q Okay. And showing you Exhibit Number J,
15 by the time this letter came, Bay 5 had a store in
16 it; Bay 8 still was empty. What did you do with the
17 items in Bay 8 after you received that letter?

18 A We took that -- whatever merchandise that
19 was really not significant and we moved it into the
20 Plaza East warehouse.

21 Q And that's what you would have done if
22 you'd known they were charging you rent long before
23 that?

24 A Absolutely. Absolutely.

25 MR. HOLT: No other questions.



1 THE COURT: Ms. Perrell, your turn.

2 CROSS-EXAMINATION

3 BY MS. PERRELL:

4 Q Okay. Mr. Hamed, your testimony is, is
5 that you do not believe that Plaza East started
6 utilizing Bay 5 in May of 1994; is that your
7 testimony now?

8 A Yes.

9 Q Okay. Do you recall that we took your
10 deposition in this matter?

11 A I'm sorry?

12 Q Do you recall that we took your deposition
13 in this matter?

14 A Yes.

15 Q Okay. And do you recall that I asked you
16 questions about when it was that the Bay 5 was
17 utilized?

18 A I believe so. Yeah, there was questions
19 in regards.

20 Q Okay. Do you recall my question that
21 said:

22 "And if Mike Yusuf were to testify
23 that it was in the Spring of 1994,

24 you cannot dispute that, correct?"

25 And do you recall that your answer was:

164

1 "I can't say for sure, but I guess
2 what he says, he says. I don't
3 recall exactly what the year was or
4 what the date was or the month."

5 Do you recall that testimony?

6 A Yes, I do.

7 Q Okay. You do recall, however, breaking
8 the wall, correct?

9 A Yes.

10 Q Okay. And did you contact Mr. Yusuf
11 before you broke the wall?

12 A No, because Mike Yusuf was right there.

13 Q Okay. Do you recall that Mr. Yusuf was
14 angry and frustrated that the cinder block wall had
15 been broken?

16 A That situation that they stated, it never
17 happened. I don't recall none of that.

18 Q Okay. So it's your testimony that
19 Mr. Yusuf was not at all upset about the wall being
20 broken for retail -- going into his retail space?

21 A That was never discussed then.

22 Q Okay.

23 A Now, can I add something to that? I mean,
24 if he was -- if he was so upset about it, why would
25 he let me continue doing it?

165

1 Q All right. But isn't it true that you did
2 utilize that space for, as you heard testimony from
3 Mike Yusuf, for sodas, correct?

4 A Yes.

5 Q Okay. And the space, the hole is big
6 enough for a forklift to go through, correct?

7 A That is true. Yes.

8 Q All right. And so the forklift was going
9 through with pallets of product, or crates, correct?

10 A That's correct.

11 Q Okay. And when you say it was used off
12 and on, isn't it true that it was used continuously
13 but then not after it was rented out? Is that what
14 you mean?

15 A It was -- I mean, the opening was there.
16 There was product in there; and then once --
17 whenever they needed it, we cleaned it out and we
18 gave it back to them.

19 Q Right. And when they needed it would be

20 if they were renting it to a third party tenant,
21 right?

22 A That's correct. Yes.

23 Q Okay. So when they weren't renting it to
24 a third party tenant, you would agree with me that
25 the Plaza Extra East store was using it

↑

166

1 continuously?

2 A Yes, I would say. I will agree with that,
3 yes.

4 Q Okay. You would also agree with me,
5 wouldn't you, that Bay 5 is considered a --
6 definitely was a retail space, correct?

7 A Yes.

8 Q And did you ever keep any particular
9 record as to when Plaza Extra East utilized Bay 5
10 and 8?

11 A No.

12 Q So with regard to Bays 5 and 8 -- let me
13 back up.

14 You did have discussions with Mr. Yusuf
15 about the rent for Bay 1 at various points in time;
16 isn't that true?

17 A Well, I had discussions, or Mr. Yusuf

18 would have discussions with me in regards to
19 Plaza Extra.

20 Q For Bay 1?

21 A Not -- we never referred to it as Bay 1,
22 Bay 2, or Bay 3. When we had discussions, he would
23 talk about Plaza Extra, and that's what I know, it's
24 Plaza Extra. I didn't know if it was Bay 1, Bay 2,
25 whatever, whatever designation they gave it; I had

167

1 no idea what it was.

2 Q Okay. So let me back up.

3 With regard to the rent for the period of
4 1994 through 2004, you had an understanding as to
5 how that rent was going to be calculated for Bay 1,
6 correct?

7 A Again, I'm not sure if it's Bay 1. I know
8 it's for Plaza Extra, ma'am. That's what he refers
9 to, and that's what I understood.

10 Q Okay. So you understood that that
11 calculation was based upon a square foot
12 calculation, correct, for Bay 1?

13 A We never talked about square footage. We
14 talked about the space, which is Plaza Extra.

15 Q Okay. But you're aware that the

16 calculation for Bay 1 for the period of 1994 through
17 2004 is a calculation based upon the square footage
18 of 5.55 a square foot for the space that includes
19 only Bay 1, are you not?

20 A When you refer to Bay 1, all I know, it's
21 for the occupant -- the space that Plaza Extra is
22 occupying.

23 Q You mean the store, right?

24 A Well, yes. Plaza Extra.

25 Q Okay. All right. And you understand that

↑

168

1 the calculation for Bay 1 from 1994 through 2004 was
2 a calculation that was \$5.55 a square foot times the
3 square footage of the physical store that was
4 occupied by Plaza Extra, correct?

5 A If it was by square footage or if it
6 was -- I know it was for the rent of Plaza Extra.

7 Q Right, the store.

8 A Plaza Extra, period, what we were
9 occupying.

10 Q Okay. I just want to be clear, because I
11 think what you're trying to say is what we were
12 occupying, and you're trying to add in Bay 5, Bay 8,
13 whatever it may be.

14 What I'm trying to understand is, isn't it
15 true that the way that the calculation was made for
16 the period of 1994 through 2004 as to Bay 1, which
17 is the store itself, was calculated on a square foot
18 basis, \$5.55 times the square footage of the
19 physical store itself, not including any other
20 square footage? Isn't that true?

21 A But that -- I didn't do the calculations.
22 Mr. Yusuf did those calculations.

23 Q You're not gonna dispute -- you're right,
24 Mr. Yusuf did do the calculations, and he was the
25 one that was in charge of how the rent was

↑

169

1 calculated, correct?

2 A Yes.

3 Q All right. And you acquiesced to that.
4 That was the arrangement that the partnership had
5 with Mr. Yusuf, correct?

6 A That's the arrangement he had with my
7 father, yes.

8 Q All right. And so the same holds true for
9 the period of 2004 through 2011. You had
10 conversations with Mr. Yusuf about the calculations
11 for the store for that period, correct?

12 A Yes.

13 Q All right. And you've seen the exhibits
14 where we talked through and have gone through the
15 calculations, correct?

16 A Yes.

17 Q All right. And those calculations relate
18 only to sales for Plaza Extra Tutu as compared to
19 sales for Plaza Extra East; is that correct?

20 A Yes, ma'am.

21 Q All right. And let me ask you to look at
22 Exhibit 3.

23 A Yes.

24 Q Okay. Exhibit 3 is this calculation that
25 Mr. Yusuf made with regard to the period of time,

↑

170

1 May 2004 until the end of December 2011; is that
2 right?

3 A Yes.

4 Q All right. And no where on this document
5 do you see any reference at all to Bay 5 or Bay 8;
6 is that correct?

7 A That's correct.

8 Q All right. And what is the total number
9 due there for that rent for that period?

10 A 5,408,806.74.

11 Q Okay. And can I ask you just to flip the
12 page to Exhibit 4.

13 A Yes.

14 Q Okay. Exhibit 4 is the check that was
15 actually paid. And what is the amount of the check?

16 A The same amount, 5,408,806.74.

17 Q All right. So it's the exact same amount,
18 correct?

19 A Yes, ma'am.

20 Q All right. And at no point in time --
21 well, let me back up.

22 You would agree with me, would you not,
23 that this check relates to a partial payment because
24 it only relates to the period from May of 2004
25 through the end of the December in 2011; is that

↑

171

1 right?

2 A It's for that time period, yes.

3 Q Okay. And isn't it also true that the
4 time period that we are discussing for Bay 5 is
5 before May of 2004?

6 A It's -- yes.

7 Q Okay. So this check could not have

8 covered anything having to do with the claims for
9 Bay 5 because the claims for Bay 5 deal with the
10 time period before this check covers, correct?

11 A Yes. That's what it states, yes.

12 Q Okay. And the same would hold true for
13 Bay 8. The first claim for Bay 8 is for a period of
14 time before this check is to cover, correct?

15 A I believe so, yes.

16 Q Okay. So this check could not have
17 included the early claims for Bay 5 and the first
18 claims for Bay 8; isn't that correct?

19 A That's what it says, yes.

20 Q All right. And then the second Bay 8
21 claims -- actually, a portion of those claims, the
22 check was what date? Isn't it February of 2012?

23 A I'm sorry, you're referring to the
24 \$5 million check?

25 Q Yes.

↑

172

1 A Yeah, February 7, 2012.

2 Q Okay. And so isn't it also true that a
3 portion of the Bay 8 rent claim continues until
4 May 30th of 2013, correct?

5 A If it's stated, yes.

6 Q Okay. So then that would mean that a
7 check cut in February of 2012 could not cover rent
8 from February 7, 2012, forward because that's not
9 the period of time that it relates to, correct?

10 A Yeah, I'm sorry. Could you repeat that
11 'cause I'm getting a little confused with the dates
12 now.

13 Q Sure.

14 The check was cut on February 7, 2012,
15 correct?

16 A Okay.

17 Q Okay. Well, yes or no?

18 A Yes. That's correct.

19 Q Sorry. Okay.

20 And we've already established that the
21 check covered rent for the time period May of 2004
22 through the end of December 2011, correct?

23 A Yes.

24 Q Okay. And so isn't it also true that that
25 check could not have covered the Bay 8 -- part of

↑

173

1 the Bay 8 claim that is from January of 2012 through
2 May 30th of 2013 'cause it's after this period?

3 A That's true.

4 Q Okay. And I believe it was your testimony
5 that although you had discussions with Mr. Yusuf
6 about the rent, it's your testimony that you
7 understood this was free, this Bay 5 and 8 were
8 going to be given or available for free?

9 A We were all teams. We never discussed
10 rent, we never discussed rates, we never mentioned
11 anything that I have to pay --

12 Q Okay.

13 A -- or we have to pay, but the partnership
14 or Plaza Extra has to pay.

15 Q Right.

16 But it was Mr. Yusuf who really set the
17 amounts and so forth for the rent, correct? -- for
18 all of the different rents, right?

19 A Well, he owns the shopping center; he
20 could do that. But the thing is, we never agreed on
21 anything regarding rent for those bays. We never
22 agreed or even mentioned that I have to pay any rent
23 for those bays.

24 Q Okay. So would you agree with me that the
25 partnership benefited by being able to use the Bay 5

↑

1 for that period that you used it to store the sodas

2 or whatever inventory you used it for, would you
3 agree that the store benefited from that?

4 A I would say yes.

5 Q Okay. And would you also agree with me
6 that the store benefited from the period of time in
7 which the store utilized Bay 8 both earlier and
8 later to store inventory?

9 A Yes.

10 Q Okay. Just a moment.

11 (Pause.)

12 BY MS. PERRELL:

13 Q You would also agree with me, would you
14 not, that the store benefited from the fact that
15 Mr. Yusuf didn't require rent -- and I mean rent for
16 Bay 5, Bay 8, Bay 1, the main store, any rent --
17 that the store benefited by not having to pay that
18 on a monthly basis, and only having it pay it at
19 varying points in time?

20 A I don't see how you could say that. We
21 have an obligation to pay rent. The store was
22 making money and I was capable of paying rent.
23 Mr. Yusuf chose not to do that.

24 Q Okay. And didn't he utilize those funds
25 for things sometimes for the partnership?

↑

1 A Well, if he did, he did.

2 Q Okay. So didn't it also create greater
3 liquidity for the various stores, not having to have
4 a rent obligation every single month?

5 A Look, we had enough money. We had enough
6 profits to go ahead and pay rent. We were paying
7 rent at Tutu Park with no problems, and it's one of
8 the smaller stores that we have. He chose not to.

9 Q With regard to Exhibit -- I believe it is
10 Exhibit 5.

11 A Yes.

12 Q Okay. With regard to Exhibit 5, prior
13 to -- Exhibit 5 is when there's a letter that came
14 from Attorney Nizar DeWood to your attorney, or your
15 father's attorney, by extension, regarding
16 outstanding rent for Bay 1 and then also for Bay 5
17 and some Bay 8. Now, we've talked about the
18 discrepancy on the numbers.

19 But vis-à-vis Bay 1, had you, before this
20 time, in May of 2013, ever disputed that you were
21 going to have -- that the partnership should pay for
22 the rent from 1994 through 2004?

23 A No. We know we owed rent.

24 Q But you refused to pay it, correct?

25 A What you mean I refuse to pay it? It was

176

1 never asked. It was never demanded until that day.

2 Q All right. And is it your testimony that
3 you agreed to pay that rent?

4 A When he demanded -- when he demanded rent
5 in the previous year, in 2012, he got paid for it.

6 Q Right. And so that's my question is, is
7 so in May of 2013, is it your testimony that you had
8 no objection to paying the rent for Bay 8 -- Bay 1?

9 A I take objection to that. I think that --
10 I'm not sure exactly how it played out with the
11 attorneys. I don't recall exactly, but there might
12 have been a contention there or something. I'm not
13 sure. I don't recall exactly.

14 Q All right. Were you ever contending that
15 the rent was never due for that period?

16 A I don't recall exactly how it played out
17 back then.

18 Q Okay. Isn't it true that you did contest
19 that you owed, or that the Hamed family owed the
20 Bay 1 January 1994 through April 2004 rent after
21 receiving this letter?

22 A If you say so, I guess, but I really don't

23 recall exactly. I mean, it's been several years and
24 a lot of things all over the place.

25 Q Okay.

177

1 A I don't recall exactly what ...

2 Q Right. All right.

3 So that would have been, however, the
4 first time that, in fact, you would have been
5 contesting that Mr. Yusuf or United Shopping Center
6 would have been able to get rent?

7 A I'm sorry, could you repeat that?

8 Q Yeah.

9 Isn't it true that after you received this
10 letter in 2013, and your lawyer wrote back
11 contesting it, that that was really the first time
12 that Hamed started to contest that additional rent
13 was due?

14 A I'm not too sure exactly what's the
15 context of what Mr. Holt said, or the reply to him,
16 but, yes, whatever the letter or whatever the
17 contest that Mr. Holt said, I agree with.

18 Q Okay. All right. But before that time,
19 there was never any issue that the
20 Plaza Extra Partnership would owe rent to

21 United Shopping Center? You're not denying that
22 that was the deal?

23 A We're not denying that we don't owe rent
24 or we're not supposed to pay rent; we know that. We
25 paid rent the year before.

178

1 Q Okay. All right.

2 MS. PERRELL: I don't believe I have any
3 more questions.

4 Thank you.

5 MR. HOLT: Just briefly.

6 REDIRECT EXAMINATION

7 BY MR. HOLT:

8 Q You keep hearing people say, and you were
9 asked the question whether or not Mr. Yusuf could
10 just determine what amount was due.

11 Isn't it true that Mr. Yusuf attempted to
12 collect \$250,000 a month from Plaza from January of
13 2012 up until the time it moved out?

14 A Yes, sir.

15 Q And you didn't agree to pay that, did you?

16 A Absolutely not.

17 Q And the Court found that that was not due,
18 didn't it?

19 A That's true.

20 Q And you were asked whether or not the
21 store benefited from using the space. But, if a
22 store is being required to pay more than the value
23 of warehouse rental space and, instead, is being
24 required -- asked to pay retail value, then the
25 store is not benefiting from that, is it?

179

1 A Of course not.

2 Q The benefit would only be equal to what
3 warehouse space costs?

4 A Yes, sir.

5 Q And had you known that you were even being
6 charged for that, you had other storage available,
7 correct?

8 A Yes.

9 Q So you could have avoided that --

10 A If I had known I was gonna be charged or
11 we were gonna be charged such amount, I definitely
12 would have found the ways and means of not utilizing
13 the space.

14 Q And prior to Mr. Nizar's letter of May 17,
15 2013, did you ever have any idea that Mr. Yusuf was
16 going to try to charge you rent for Bays 5 and 8?

17 A No, sir.

18 Q And then looking at Exhibit -- I believe
19 it's Exhibit Number 3, which is the rent calculation
20 for January 1, 2004 to January 31, 2004, do you see
21 that?

22 A Yes.

23 Q Does this say that this is limited to
24 Bay 1?

25 A No.

↑

180

1 Q It doesn't mention what bay it is, does
2 it?

3 A No, sir.

4 Q And at the time you negotiated this, did
5 you have any idea that they would be seeking rent
6 for Bays 5 and 8?

7 A Never.

8 Q And in looking over on the next page,
9 Exhibit Number 4, and it's a check on Plaza Extra
10 account for 5.4 million, what does the memo say it's
11 for?

12 A It says, "Plaza Extra, Sion Farm, Rent."

13 Q And at the time that you wrote that check,
14 did you think that you were paying rent currently

15 for Plaza Extra, for whatever it owed the landlord
16 up to that date?

17 A Yes.

18 Q And up until Nizar's letter, did you ever
19 seek any documentation from anyone at United,
20 whether it be Mr. Luff, Mr. Yusuf, or Mike Yusuf,
21 that there would be a claim for rent against the
22 Supermarket for Bays 5 and 8?

23 A No, sir.

24 MR. HOLT: No other questions.

25 MS. PERRELL: Your Honor, I just have one

181

1 brief redirect, or recross.

2 THE COURT: Yes, you may.

3 MS. PERRELL: Okay.

4 RECROSS EXAMINATION

5 BY MS. PERRELL:

6 Q Mr. Hamed, you just testified that when
7 you paid or authorized the payment of the \$5,408,000
8 check, that you understood that was for all the rent
9 that may have been due. But isn't it true that you
10 testified earlier that that rent was only for that
11 period May 2004 through the end of December 2011,
12 correct?

13 A Yeah, that's what it states. That's what
14 the check states. That's what the payment is, yes.

15 Q All right. So it doesn't include whatever
16 claims there may have been for rent prior to 2004,
17 correct?

18 A The check is paid according to the time
19 period.

20 MS. PERRELL: Okay. No further questions.

21 MR. HOLT: Just briefly.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. HOLT:

24 Q But at the time you wrote that check, you
25 had no idea that someone was going to make a claim

↑

182

1 for rent before that time period for Bays 5 and 8,
2 did you?

3 A Absolutely not, because that was never
4 discussed. I mean, looking at it, the request for
5 Bay 5 and 8 is in 2013, where this check is in 2012.
6 If he had a claim or he wanted to charge me, why
7 didn't he charge me back then and told me that this
8 is part of it? Why after the fact he goes back and
9 tells me, oh, I have to pay 5 and 8.

10 MR. HOLT: No other questions.

11 THE COURT: Thank you, Mr. Hamed.

12 MR. HOLT: Your Honor, I have decided I
13 don't need to call Willie Hamed because the issue he
14 was gonna discuss has been now discussed by three
15 different witnesses, and I don't think he can really
16 add to it.

17 So the Plaintiff rests. And -- yeah, the
18 Plaintiff rests.

19 THE COURT: Is there anything further from
20 the Defendant?

21 MS. PERRELL: No, Your Honor. I think
22 we've beat this as much as can be done for this.

23 I can give a closing argument or I can, you
24 know --

25 One suggestion I had would perhaps be for us

↑

183

1 to provide some proposed findings just to make it
2 easier once we get transcripts and so forth.

3 But, you know, I will do whatever is at the
4 Court's pleasure. I know we've all been here a long
5 time, particularly for a Zoom meeting.

6 THE COURT: How soon can you get proposed
7 findings to the Court?

8 MS. PERRELL: I think first it would

9 depend on when our court reporter might be able to
10 get us the transcripts; but I think once we get the
11 transcripts, we could do it fairly quickly. I want
12 to say maybe ten, 14 days, two weeks, something like
13 that.

14 THE COURT: Attorney Holt?

15 MR. HOLT: Your Honor, whatever you think
16 is the most expeditious way for you to look at it,
17 because you may not need the benefit of that or you
18 may want the benefit of that. So, therefore, I'll
19 leave it to you.

20 I would make one comment. We did block off
21 two days for this, but Attorney Perrell and I discussed
22 this, and all the testimony that you've heard would
23 apply to both the Y-2 and the Y-4 claims.

24 On the Y-4 claim, which is a claim for
25 interest, if you find no rent, then there's no

↑

184

1 interest. If you do find rent, then there's legal
2 arguments about rent, but there's no more testimony
3 that you would hear about it.

4 THE COURT: So there is no need for
5 further testimony?

6 MR. HOLT: Correct.

7 THE COURT: I agree.

8 MS. PERRELL: So would you --

9 THE COURT: Ask the reporter how long it
10 would take to produce the transcript.

11 MR. HOLT: Noreen, can you hear us?
12 (Discussion held off the record.)

13 THE COURT: All right. Can we get an
14 expedited transcript; and then within ten days
15 after, the parties may submit a proposed findings
16 and conclusions.

17 MS. PERRELL: Thank you, Your Honor.

18 MR. HOLT: Your Honor, that's fine. The
19 only thing I will caveat is our proposed findings on
20 the interest will be in the alternate.

21 THE COURT: Yes. I understand.

22 MR. HOLT: Okay. All right.

23 THE COURT: One other subject. We have
24 three more hearings to go. When do you want them?

25 MS. PERRELL: I don't know. When do you

↑

185

1 want the next hearings?

2 MR. HOLT: I'm not sure what the next
3 issue is, and that --

4 THE COURT: You have the half acre in

5 St. Thomas --

6 MS. PERRELL: The Tutu?

7 Your Honor, I think what we could do is since
8 we have the day blocked off, I know Carl and I -- or
9 Attorney Holt and then Attorney Hartmann and I and
10 Attorney Herpel can maybe pull our calendars together
11 and see what works on our end, because we're gonna need
12 all of us together, and then provide you dates as quick
13 as we can.

14 I know, you know, what we were concerned
15 about was is because it's Zoom, was this going to work
16 and how effective was it or efficient, and so part of
17 it was we wanted to keep this one issue so we could try
18 it and see what everybody thinks.

19 I mean, my opinion is I think it works fairly
20 well. So, you know, let us put our heads together and
21 come up with some dates and get those to you as quick
22 as we can.

23 THE COURT: I have no objection to that,
24 but we need to get it done.

25 The money that was spent, where is that, in

↑

186

1 St. Thomas, for that claim?

2 In your informational notice in, I think it's

3 September, you sent in -- you listed the five areas. I
4 remember (inaudible) when Yusuf partnership restores
5 private businesses, a half acre in Estate Tutu, and the
6 third one was the loss of assets due to wrongful
7 dissolution. Those are the three issues.

8 MS. PERRELL: Okay.

9 MR. HOLT: What was the third one,
10 Your Honor?

11 THE COURT: Loss of assets due to wrongful
12 dissolution. Hamed's claims 16, 142, and 164.
13 Those are the three remaining claims.

14 MR. HOLT: And I think that that's the
15 three remaining claims in this phase, but I may be
16 wrong.

17 MS. PERRELL: Yes, I think that's in this
18 phase.

19 MR. HOLT: I think there's other phases,
20 Your Honor.

21 THE COURT: Yeah, I know we are in one
22 phase. We still have two more phases to go through,
23 but ...

24 MR. HOLT: All right. We'll get together
25 on those, Your Honor. I mean, it would be great if

↑

1 somehow or another we could settle some of it, but
2 so far we've been unable to.

3 MS. PERRELL: So we'll get back to you on
4 that as quick as we can.

5 I wanted to raise another issue while I've
6 got everyone here, and just to Carl and Kim as well.

7 There's the storage facility that is here in
8 St. Thomas that has a number of boxes. Obviously, I
9 think we referenced that earlier today. I know, Judge
10 Ross, you indicated that you'd like for the parties to
11 figure out something to do with those, and, you know,
12 so I just want to let you know we haven't -- we know
13 that that's an issue. I'll connect with Carl and Joel
14 on what's the best way to resolve that, whether they
15 can just be, you know, destroyed or how the client
16 wants to handle that. And we will try to get back to
17 you on that as quick as we can. We'll get back to you
18 on these dates as well.

19 THE COURT: What has been happening,
20 Attorney Holt, if you're not aware, is that monthly
21 we're paying --

22 MR. HOLT: I'm aware. I get the emails,
23 yeah.

24 THE COURT: And I just wanted to make sure
25 that the partners are aware they're spending money



1 they don't have to if they don't need the records to
2 be retained, and I've been trying to get Mr. Yusuf
3 to at least approach both sides to see what they
4 should do with the records. And until I refuse to
5 sign a check for the payment to the last monthly
6 storage fees, nothing hasn't been done. So the
7 storage fees has not been paid, and you got to
8 decide what you want to do with the records.

9 It's obviously partnership records. It
10 predated the raid. It's from the raid of the FBI and
11 whatnot. So there's partnership records. Now, what
12 you want to do with them is a decision you have to make
13 or you can continue to spend the money.

14 MS. PERRELL: We'll talk about that,
15 Your Honor. I know there's a couple of, for
16 example, physical corporate books, you know, the
17 actual, like, corporate binder books for, I think
18 it's Plessen and some of the other entities. So,
19 you know, there may be some of the records that have
20 to be retained and some of them are not.

21 I know Kim and I spent a lot of time there,
22 unfortunately, and a lot of it is just receipts and so
23 forth that we don't need to retain. So it may not be

24 a -- you know, a clean issue of all or none; it might
25 be, you know, some mix. But we'll make arrangements to

189

1 deal with that and come up with a plan that makes
2 sense.

3 THE COURT: If there are Plessen records
4 that need to be returned to Plessen, they should be
5 returned to Plessen. The partnership shouldn't have
6 to pay for its storage.

7 If they're separate corporate records that
8 can be returned to the corporate keeper --

9 MS. PERRELL: Right.

10 THE COURT: -- then we don't have to
11 (inaudible) and the others can be destroyed.

12 MR. HOLT: All right.

13 MS. PERRELL: I agree.

14 THE COURT: All right. Thank you all very
15 much.

16 MS. PERRELL: Thank you.

17 -0-

18 (Whereupon, proceedings concluded.)

19 -0-

20

21

22
23
24
25



1 DEPOSITION ERRATA SHEET

2 Page No.____Line No.____Change to:_____

3 _____

4 Reason for Change:_____

5 Page No.____Line No.____Change to:_____

6 _____

7 Reason for Change:_____

8 Page No.____Line No.____Change to:_____

9 _____

10 Reason for Change:_____

11 Page No.____Line No.____Change to:_____

12 _____

13 Reason for Change:_____

14 Page No.____Line No.____Change to:_____

15 _____

16 Reason for Change:_____

17 Page No.____Line No.____Change to:_____

18 _____

19 Reason for Change:_____

20 Page No.____Line No.____Change to:_____

21 _____

22 Reason for Change:_____

23

24 _____ DATE:_____

25 Deponent's Signature



DECLARATION UNDER PENALTY OF PERJURY

I declare under the penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the ____ day of _____, 20__.

Deponent's Signature

COURT REPORTER'S CERTIFICATE

I, N. Antoinette Cérge, Registered Professional Reporter with the National Court Reporters Association; Certified Shorthand Reporter, licensed in the State of California; Notary Public in the U.S. Virgin Islands, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

Dated: February 8, 2021

N. Antoinette Cèrge, RPR/CSR

