

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

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

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF and UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

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

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

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

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

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

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

JURY TRIAL DEMANDED

Consolidated with

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

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

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

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S RESPONSE TO YUSUF'S MOTION FOR ADDITIONAL RULINGS FROM  
MASTER RE: CLAIM H-163 PRIOR TO CONDUCTING EVIDENTIARY HEARING**

Despite months of planning for the upcoming hearing, Yusuf now comes before the Court at the 23<sup>rd</sup> hour – without consultation with opposing counsel – with a confusing motion to proceed with the scheduled April 15<sup>th</sup> hearing in this case, but to **limit it** to oral argument on various legal issues that he claims are still unresolved. However, in reality the motion is nothing more than an untimely motion to reconsider this Court's June 2, 2020, Order, which addressed and resolved all of the issues now being raised.

Thus, it is respectfully submitted that the motion should be denied, particularly since this evidentiary hearing has already been set after repeated discussion between the parties and with the Court; with the actual expected evidence to be *very brief*, consisting of two witnesses and a few exhibits.<sup>1</sup>

#### I. The June 2<sup>nd</sup> Order

Despite Yusuf's sudden "scepticism" about this claim, the Master already held, on June 2, 2020, that Hamed could pursue his wrongful dissociation claim. In reaching this decision, the Master concluded there was evidence that would support a finding that this was not an at-will partnership, but a partnership for a particular term, noting on pp. 20-21:

In its Injunction Order, the Court cited to: (i) Plaintiff's Evidentiary Hearing Exhibit 1 (Transcript, February 2, 2000 **Oral Deposition of Fathi Yusuf: *Idheileh v. United Corp. and Yusuf*, Case No. 156/1997, Territorial Court of the Virgin Islands, *Hamed v. Yusuf, et al.* SX-12-CV-370; SX-14-CV-278; SX-14-CV-287 ORDER Page 23 of 29 Div. St. Thomas and St. John), at 18, lines 18-23 ("**I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000.**" . . . (Emphasis added.)**

The Master repeatedly referenced Yusuf's testimony several other times in the ORDER.

For example, the Master observed at p. 23 of the ORDER:

Based on the parties' present arguments, there is clearly a genuine dispute as to whether there was an express provision that the Partnership would continue until a loss of \$800,000.

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<sup>1</sup> There will be absolutely no prejudice to Yusuf if his motion is denied, as his counsel will still have a full opportunity to argue any remaining legal issues in the post-hearing brief.

At the upcoming hearing, Hamed will respectfully argue that Yusuf's testimony on the duration of the partnership---that as long as the partnership was making money and did not lose over \$800,000, it would continue to last--is an admission that is dispositive of this issue. This agreement was critical, as it is undisputed that Mohammad Hamed put at least \$400,000 into the partnership in order to build the Plaza Extra Supermarket, located in the United Shopping Center owned by Fathi Yusuf. In recognition of this very significant contribution---Hamed's sale of his own grocery store and the balance of his life savings at that time--Yusuf agreed to match that amount and then stated that his partnership with Hamed would continue until it lost \$800,000.<sup>2</sup>

This agreement, of course, makes common sense, as why would Hamed invest all of his life savings---at least \$400,000 in 1986--in a business that Yusuf now argues *could have been terminated at any time* -- even immediately after getting the funds to build the East Store. Indeed, an automatic right to terminate the partnership at any time would give Fathi Yusuf the absolute right to just take the value of Hamed's investment at no cost to him at any time, as he owned the shopping center where the supermarket was located, for which the partnership did not have a lease. Indeed, this agreement explains why there was never a lease for the supermarket, ***even though the Partnership paid full rent***, as Hamed was guaranteed to be a partner in the Plaza Extra Supermarket (and the partnership have use of the store) *so long as his initial investment was never lost*.

In any event, after concluding there is testimony that would support a finding that the partnership was not just an at-will partnership, the Master held on p. 21:

Based on the parties' present arguments, there is clearly a genuine dispute as to whether the Partnership was a partnership at will or a partnership until the completion of a particular undertaking, and thereby there is clearly a genuine dispute as to whether Title 26 V.I.C. §122(b)(2)(i) is applicable here.

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<sup>2</sup> That admission in his deposition is attached again as Exhibit A.

Thus, while Yusuf spends pages in his recent filing trying to re-characterize what he said, the Master has held that this is a factual dispute requiring an evidentiary hearing.

One last point is in order regarding the June 2<sup>nd</sup> Order. In discussing the potential recovery for such a claim, the Master held that Hamed is not entitled to damages for this claim. *Id.* at p. 29. Instead, this Court held on p. 25:

As the Court stated in the Limitations Order, “under the RUPA framework, the “claims” to which the parties refer are, in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account.” (Limitations Order, p. 11) Thus, the resolution of an Accounting Claim should not be viewed as “damages” awarded against one partner and recovered by the other partner, and instead, **it should be viewed as credits or charges to be applied in ascertaining the balance of each partner’s individual partnership account.** (Emphasis added).

The Master further held that (1) prior accounting claims that had already been decided could not be sought again here and (2) this accounting claim was subject to the Judge Brady’s “Limitations Order” barring claims before September 17, 2006. *Id.* p. 28-29. With this summary in mind, a brief response is in order to Yusuf’s new arguments.

## II. Yusuf’s April 1, 2021, Motion

After a rambling introduction, Yusuf’s counsel puts forward two legal arguments that they think still need to be addressed, but both have already been resolved.

### A. Section I-The Law of the Case and Judicial Estoppel Arguments

In Section I, Yusuf argues that Judge Brady’s Preliminary Injunction findings, as well as the V.I. Supreme Court’s subsequent opinion affirming Judge Brady’s findings, bar any argument that the partnership was anything other than an at-will partnership under either the “Law of the Case” or under the doctrine of judicial estoppel. However, the Master has already rejected this identical argument in the June 2<sup>nd</sup> Order, stating on pp. 18-19:

The Master must also note at the outset that, while both Hamed and Yusuf relied on the findings of fact in the Court’s Injunction Order, “[i]t is well-established that factual findings and conclusions of law made when considering a preliminary matter, such as a motion for a temporary restraining order, are not in any way binding on the

court in subsequent proceedings in the same case.” *Appleyard v. Governor Juan F. Luis Hospital & Medical Center*, 61 V.I. 578, 588 (V.I. 2014); **see also Yusuf v. Hamed, 59 V.I. 841, 853 (V.I. 2013) “[t]hese findings are only for the purposes of the injunction, and do not bind the jury”**) . . . . see also *William G. Wilcox, D.O., P.C. Employees' Defined Ben. Pension Trust v. United States*, 888 F.2d 1111, 1114 (6th Cir. 1989) (“**As a general rule, decisions on preliminary injunctions do not constitute law of the case and ‘parties are free to litigate the merits.’**”) . . . . Accordingly, the Master is not bound by the findings of fact and conclusions of law made by the Court in the Injunction Order. (Emphasis added) (Footnote omitted).

Thus, this “law of the case” and the “judicial estoppel” doctrine were addressed and resolved by the Master already.

Notwithstanding this fact, Yusuf’s (incorrectly) asserts that the V.I. Supreme Court held as a matter of law that the partnership was an at-will partnership, so that holding is the law of the case, binding on the Master. However, the V.I. Supreme Court made no such finding about THIS partnership, nor did it address the evidence considered by the Master in the June 2, 2020, Order. Instead, the V.I. Supreme Court simply discussed several different reasons a RUPA partnership would not be subject to the Statute of Frauds-- noting also that an at-will partnership is not subject to a SOF defense since it can be terminated at any time and may not last a year.<sup>3</sup> See *Yusuf v. Hamed*, 59 V.I. 841, 852 (VI 2013). Thus, there is no need to re-address this issue before an evidentiary hearing is held on this claim, as it is a claim not previously decided before, as the Master expressly stated in the June 2<sup>nd</sup> Order at p. 26 (“**As such, unlike what Yusuf argued here, the Court has not ruled on the issue of whether Hamed alleged an at-will partnership or whether Yusuf wrongfully dissociated.**”).

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<sup>3</sup> A review of Hamed’s brief in that case was used by the Court almost verbatim—and similarly, Hamed simply noted that RUPA partnerships are not subject to the SOF, for several reasons, including the possibility that any such partnership that was “at-will” would automatically be excluded.

Two additional comments are in order. First, Yusuf's newly raised concern that there is a SOF issue if this is not an at-will partnership can also be summarily rejected as well. In this regard, the RUPA displaces standard SOF issues where it has been enacted, and a partnership for a particular duration (like one continuing "until we lose \$800,000") could still last less than a year, mooted a SOF defense, as noted by the V.I. Supreme Court in *Yusuf, supra* at 852. In fact, this partnership had been in business for over 25 years when Yusuf abruptly tried to terminate it, which negates a SOF argument, as Judge Brady pointed out:

7. Even if the statute of frauds were applicable to the formation of a partnership, the doctrine of part performance operates to prevent an inequity where a person is induced or permitted to invest time, money and labor in reliance upon an oral agreement, which agreement would otherwise be voided by the application of the statute of frauds. **Accordingly, if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I.2006), citations omitted.** (Emphasis added).

*Hamed v. Yusuf*, 58 V.I. 117, 131 (V.I. Super. Ct. Apr. 25, 2013), *aff'd in part, vacated in part*, 59 V.I. 841 (2013).

Second, Yusuf also asserted multiple new "factual" assertions in its motion, all of which are simply factual issues he can raise in his defense at the April 15<sup>th</sup> hearing if he chooses to do so. For example:

- Yusuf can argue that he was justified in terminating the partnership because he allegedly caught Wally Hamed taking funds, but that claim is irrelevant to H-163, as Yusuf subsequently abandoned a negotiated termination in early 2012 and instead tried to take 100% of its assets in late 2012, claiming that NO PARTNERSHIP HAD EVER EXISTED. This is the quintessential abrogation of a RUPA partnership.
- By way of another example, Yusuf can argue that the Master has already made such a finding—that Wally Hamed took funds---as he argued in his motion, but the evidence will show *that no such finding has ever been made by the Master.*
- By way of a final example, Yusuf can try to recast Hamed's wrongful disassociation claim as taking place in February of 2012 when Yusuf started to negotiate a termination of the partnership, but the evidence will show that Hamed's claim is based on Yusuf's conduct between August, 2012, and May, 2013, when he denied

the existence of the partnership, not his prior negotiating efforts *that were conducted while the partnership continued to operate as it had done for years.*

In short, not only have all of these legal issues been addressed and resolved, but there are no legal issues that need to be resolved before an evidentiary hearing on the merits of H-163. Equally important, even if there were new legal issues that Yusuf failed to previously raise, there is no reason to limit the April 15<sup>th</sup> hearing to just these new legal arguments when the evidence can be heard quite quickly, with the parties then briefing whatever additional legal arguments they choose to address in their post hearing briefs.

### **B. Section II-The permitted recovery for wrongful disassociation**

Yusuf complains next that Hamed is seeking sums barred by Judge Brady's Limitations Order. That representation is incorrect. Indeed, while not required to do so, Hamed's counsel submitted a more succinct description of the accounting claim being pursued in an email sent to Yusuf's counsel on March 29<sup>th</sup> (which Yusuf did not attach to his motion) with potential damage exhibits attached, clarifying in part:

In discussing the potential recovery for such a claim, the Master held that Hamed is not entitled to "damages", *id.* at p. 29, but that he could seek any accounting claim he had not previously asserted, *id.* at p. 25, subject to the Judge Brady's prior "Limitations Order". *Id.* p. 28-29. While Carl tried to explain what proof will be offered in the memo attached to the email he sent you on March 16<sup>th</sup>, I think the evidence will be slightly different and much simpler than what he provided you. In this regard, Hamed will seek one additional post-Limitations "accounting" claim under H-163—the ledger value of Hamed's partnership interest in the Plaza Extra East premises at the time of Yusuf's wrongful disassociation.

Before the value of this ledger entry can be calculated, it must be determined when this cause of action arose. As we have stated previously, Yusuf's wrongful conduct giving rise to this claim began in August of 2012 and continued until Judge Brady preliminarily enjoined such action on April 25, 2013. Thus, the cause of action for wrongful disassociation arose during this time under the applicable law. As you know, up until this time the partnership had continuously maintained and improved the Plaza East Supermarket's premises over the years with equal contributions by Mohammad Hamed.

While there is no lease for this premises, so that the on-going value of the Plaza East Supermarket cannot be calculated, the ledger entry value of the

premises itself in 2012 is easy to determine. In this regard, I have attached some additional documents we will use to make this proof at the April 15<sup>th</sup> hearing. Additionally, we will call both Wally and Mafi Hamed to testify about (and expand upon) all of the foregoing financial issues discussed herein. In short, Mohammad Hamed is entitled to the ledger entry value of the premises that he helped create based on the express agreement that the supermarket would continue to operate as a partnership until it lost \$800,000.

This proffer is only being submitted so the Court will understand that Hamed fully understands the parameters of the permitted recovery in this case, as obviously any ruling on the validity of this claim can only be made after an evidentiary hearing.

In short, Yusuf's complaints about how Hamed will establish his accounting claim is premature and is not a proper basis for limiting this hearing to an argument of the new legal issues belatedly raised by Yusuf. Indeed, as noted, the time it will take to put on the evidence on this accounting claim will only take an hour or so, far less than it has taken to respond to this motion.

### III. Conclusion

As this claim has been pending for years, was agreed to be heard on April 15<sup>th</sup> and has been scheduled for that date, it is respectfully submitted that the Master should proceed with this admittedly brief evidentiary hearing as scheduled, with Yusuf having a full opportunity to raise any arguments at the hearing, as well as in in his post-trial brief.

**Dated:** April 5, 2021



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### CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2021, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master  
% edgarrossjudge@hotmail.com

**Stefan Herpel**

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IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

AHMAD IDHEILAH,  
Plaintiff,

vs.

UNITED CORPORATION and  
FATHI YUSUF, Individually,

Defendants.

Case No. 156/1997

THE ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of February 2000, at the Offices of Caribbean Scribes, 2132 Company St., Ste. 3, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 1:05 p.m. and 4:05 p.m. pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161

EXHIBIT  
A

Cheryl L. Haase  
(340) 773-8161

COPY

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FATHI YUSUF,

Called as a witness, having been first duly sworn,

Testified on his oath as follows:

DIRECT EXAMINATION

BY MR. ADAMS:

Q. Good afternoon, Mr. Yusuf.

A. Good afternoon, sir.

Q. As you are aware, we are here today to take your deposition in the matter of Ahmad Idheileh v. United Corporation and yourself.

A. Yes.

Q. In that light, sir, I would like to ask you a few questions. And maybe to begin, if we could get a little background history on your relationship with Mr. Idheileh.

When did you and Mr. Idheileh first meet, if you can recall?

A. We met, I don't know, about twenty, twenty-five years ago. I don't remember exactly.

Q. And at that time what was the relationship like before you entered into the business venture?

A. Just like an ordinary Arab, just like we came a little bit earlier before. That's all.

Q. So you would say it was a very amicable and friendly relationship?

A. At the first maybe five or ten years, it was no

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1           A.    I personally own 50 percent of Plaza Extra in  
2 1986. I own United Shopping Plaza. I'm a member of  
3 United Corporation, who owns United Shopping Plaza. I build  
4 that store, I was struggling for a loan. The whole island  
5 know what I went through. I said I'm going to build this  
6 building no matter what, and hold the supermarket for my  
7 personal use.

8                        It took me three years. I give an offer to  
9 two nephew of mine and my brother-in-law, Mr. Hamed, if they  
10 would like to join me in building up this store together, and  
11 we should not have any problem, if I finish build up the  
12 building, we should have no problem whatsoever to go to the  
13 bank and the bank will grant us the loan to operate the  
14 supermarket. Okay?

15                       During construction -- I'm going to go a  
16 little bit back to tell you what is my background. During  
17 construction, I was struggling for loan. And at that time  
18 Banco Popular, I remember, came into the Virgin Islands and  
19 took over the majority of interest of First National  
20 Citibank. They buy all their customers, and they was very  
21 hungry to do business in the island because they have  
22 expenses to face and they like to issue loan as fast as  
23 possible to cover their expenses.

24                       Excuse me. Can I have water please if you  
25 don't mind?

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HAMD200009

FATHI YUSUF -- DIRECT

1 MS. VAZZANA: Sure.

2 A. I have a problem getting a loan. Finally, I been  
3 promised verbally from Nova Scotia in the past, and when my  
4 steel came in, the way the steel came in unfabricated, they  
5 deny me any loan.

6 THE REPORTER: Unfabricated?

7 THE WITNESS: Unfabricated. It's raw steel.

8 At that time I don't have no money to buy  
9 fabricated steel, so I went to the mill in Houston and I  
10 bought unfabricated steel. And when the bank comes in, when  
11 the steel comes in and the bank sees it, they says, How you  
12 want me to loan money against this steel? How you going to  
13 put it up? You have no experience.

14 I explain to them how I would put it up. They  
15 say, Show me your plan. I show them my plan. Granted the  
16 man who did the plan with me at that time is with the chief  
17 building permit at Public Work. He just give me a plan with  
18 not too much specification, because I have no intention to  
19 give it on bid. My intention is I don't have enough money, I  
20 will put this building together.

21 So what I have is a plan approved by Public  
22 Works with not too much specification on it, and the bank  
23 saw, asked me how could I build the building? I explain to  
24 them and they say, We don't do business that way. They say,  
25 I'm sorry. That's all I have.

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1                   So I left Nova Scotia, struggling, left them  
2 not to get a loan, but did not close my account. I struggle  
3 all over looking to get a loan. I went to all local banks at  
4 that time, and everybody says, I'm sorry, we can't help you.  
5 So I find it is a golden opportunity for me to go to Banco  
6 Popular.

7                   So I went to the manager there, I explained to  
8 him my story what Scotia did to me and so he say, I will come  
9 to the site.

10                   When he come to the site where I'm building,  
11 he says, How you going to put this building together?  
12 Where's your plan? I show it to him. It's almost zero, the  
13 specification. Just numbers for me, columns, but the column  
14 doesn't say what thick, what wide. It just give me the  
15 height.

16                   So the bank, he says, Mr. Yusuf, I'm sorry.  
17 We don't do business that way. We have to have somebody  
18 professional plan with full specification. I could see your  
19 plan approved, I could see the steel here, but it's -- you  
20 don't have the proper material or record to take to my board  
21 of director to approve a loan in the millions.

22                   So I understood. My answer to that gentleman  
23 was, unfortunate because of my financial situation, I have to  
24 choose this route. But I promise you, as a man, I will put  
25 that building together. The man told me at that time, I

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1 don't see how you going to put it up. I say, Don't worry,  
2 man. I'll put it together.

3 He promised me at that time, Mr. Yusuf, I  
4 promise you if you are able to put this steel, turn it into a  
5 shopping center, as soon as you finish, come. I will give  
6 you all the money you need for the supermarket. I says,  
7 Thank you very much, sir.

8 I know I was at fault. I was not prepared,  
9 you know. I don't have nothing saleable to a bank. So I  
10 rely on my brother for financing, a brother of mine who's in  
11 Kuwait.

12 And go back a little bit, before I was looking  
13 for financing, my brother was asking me if he could join me  
14 as partner. I said no, I really want to put something for my  
15 children to secure their future and see if the bank give me,  
16 fine. I'm sure I could get it.

17 After I fail, I called my brother, I said, Are  
18 you still interested? He said yes. He did it for two  
19 reason. He did it to help me as a brother because he don't  
20 want to see me go bankrupt. And at the same time he want to  
21 make sure that he maybe could make some money.

22 Q. Uh-huh.

23 A. And my brother, we knows each other very well.  
24 He have a lot of confidence in me. He say if I will do  
25 something, I'll do it. Then my brother start to send me

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HAMD200012



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1 money.

2 Because of my ignorant in expertise, I  
3 underestimate to my brother. I told him, Oh, I think I could  
4 put this building for a million-and-a-half. The  
5 million-and-a-half run out, so my brother says, Hey, you told  
6 me that amount you'll have a shopping center, and I see  
7 you're too far out.

8 I say, Brother, all I could tell you is all  
9 your money and my money is going into the building. If I  
10 underestimating, this is nothing but a matter of ignorance.  
11 It's not a matter of trust. He say, I know you, you don't  
12 keep my money.

13 So what we did with my brother, I was supposed  
14 to do 60 percent for me, 40 percent for my brother. As the  
15 number I gave him used, he says, Look, I enter with you to  
16 give me forty and you sixty. I will give you more money if  
17 you would give me 50 percent.

18 Q. So that's how you ended up with 50 percent.

19 A. I would give you -- I will, if you would give me  
20 50/50, I'll send you more money to finish the building.

21 I say, Look, man. Your children and my  
22 children are the same. You's my brother. I'm not going  
23 to -- you'll get fifty, right? I told him that on the phone.

24 He send. His money finish. I asked him for  
25 the last 300,000. I could finish the shopping center with

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HAMD200013



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1 the last 300,000. My brother denied he don't have any more  
2 money to give me. I should go and look somewhere else.

3 I know my brother have, but my brother, with  
4 respect to him, a man don't like to go with tough decision,  
5 so he deny me that he have any more money. And I was  
6 struggling going to the bank to get some loan. But at the  
7 same time, really, I don't want to mortgage a whole shopping  
8 center with five-and-a-half acre for about three hundred  
9 thousand dollars. I don't want to hook myself.

10 So while I was building, Sunshine Supermarket  
11 opened. Okay? And it happened that somebody part owner on  
12 Sunshine spread the word around or mention some word how much  
13 they sold as their grand opening. So I have two nephew, one  
14 my brother's side and one from my sister's side, and I have  
15 my brother-in-law is Mr. Mohammed Hamed. I know the three of  
16 them have money, and I know and they know that I don't have  
17 the money.

18 They says, Uncle, I don't think we should stay  
19 in the furniture business. I think we should open up a  
20 supermarket. I says, Well, if you want, you guys bring me  
21 the money, I finish the building and I can assure you that a  
22 loan will come.

23 So I have a brother, Sam, I remember he gave  
24 me I don't remember exactly, 245,000. My daughter -- my  
25 sister son, the one who was translating this morning, think

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1 he gave me about 275,000, and to be 25 percent each,  
2 25 percent for my sister son, 25 percent for my brother son,  
3 25 percent for me.

4 But before I continue, I'm going to -- I would  
5 like to go back a little bit more to clear something. When I  
6 was in the financial difficulty, when I was in financial  
7 difficulty, my brother-in-law, he knew. I shouldn't -- he  
8 start to bring me money. Okay? He own a grocery, Mohammed  
9 Hamed, while I was building, and he have some cash. He knew  
10 I'm tight.

11 He start to bring me money. Bring me I think  
12 5,000, 10,000. I took it. After that I say, Look, we  
13 family, we want to stay family. I can't take no money from  
14 you because I don't see how I could pay you back. So he  
15 insisted, Take the money. If you can afford to, maybe pay  
16 me. And if you can't, forget about it. Okay. He kept  
17 giving me. I tell him, Under this condition I will take it.  
18 I will take it.

19 He kept giving me until \$200,000. Every  
20 dollar he make profit, he give it to me. He win the lottery  
21 twice, he gave it to me. All right? That time the man have  
22 a little grocery, they call Estate Carlton Grocery. Very  
23 small, less than 1,000 square foot, but he was a very hard  
24 worker with his children. And it was, you know, just like a  
25 convenience mom-and-pop stores. He was covering expenses and

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FATHI YUSUF -- DIRECT

1 saving money.

2 I say, Brother-in-law, you want to be a  
3 partner too? He said, Why not? You know, as a family, we  
4 sit down. Says, How much more can you raise? Say, I could  
5 raise 200,000 more. I said, Okay. Sell your grocery. I'll  
6 take the two hundred, four hundred. You will become  
7 25 percent partner.

8 So we end up I'm 25 percent, my two nephew 25  
9 each, and my brother-in-law, Mohammed Hamed, 25 percent. I  
10 don't recall the year, could be '83 or '84, but at least  
11 thanks God in the year that Sunshine Supermarket opened,  
12 because his supermarket is the one who carries these two  
13 young men and my brother to go into the supermarket with me.  
14 So I have their money, I finish the building.

15 We call the refrigeration manufacturer, not to  
16 waste time. We book an order for our refrigeration, and we  
17 committed to it. And from their money I have paid \$100,000  
18 deposit on the equipment. I was so sure the gentleman at  
19 Banco Popular, he promised me, you know. Everything were  
20 look to go me encouraging. And especially at that time I'm  
21 sure anybody in St. Croix in the past twenty, thirty years,  
22 he knew that that building will never go up. Only maybe six  
23 people in St. Croix at that time says I might be able to put  
24 it up. But 99.9 of St. Croix resident, they were looking at  
25 me as a fool.

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1 But I was confident in myself. I have, when I  
2 determine something, I have strong determination and I'm not  
3 afraid to work. So as I hit the bank and says, Hey, you got  
4 away with the building, how I know you going to make it in  
5 supermarket? You have no experience in the supermarket. How  
6 could you make it?

7 I say, Look, man, you promised me. And then  
8 look, my friend, I'm not trying to learn how to drive. I am  
9 a driver. I'm a retailer. If you move me from clothing,  
10 shoes, furniture to supermarket, it will take me no time to  
11 learn, because the retailing business is already in my blood,  
12 just like a driver. He drive a small standard car or a small  
13 pickup, it wouldn't take him no too long to drive a trailer  
14 tractor, because he know the basic of the traffic, where to  
15 stop, where to yield, where to speed, which gear to change.

16 And I told him, trying to convince the bank  
17 manager, Don't worry, man. I could be like a driver  
18 switching from driving a pickup, I could drive a trailer load  
19 easy in two weeks. It's completely different to somebody  
20 that never knows how to drive. You want to bring him from  
21 never knows how to drive, it could be, never being in a car,  
22 and you may want him to drive a trailer. I'm not that type  
23 of person.

24 This is one of the ways I was convincing the  
25 bank manager. Unfortunate at that time, I was talking to the

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1 man and he look at me, he underestimate. It came to an  
2 extent, I tell him, Look, sir. I respect your profession.  
3 You're the bank manager. I respect that. And I want you to  
4 respect my profession. I'm a retailer. Everybody have a way  
5 of making a living. Oh, I been denied.

6 Then, but when I been denied, I have to tell  
7 my partner what's going on. I been entrusted to handle the  
8 job perfect, and I am obligated to report to my partner to  
9 anything that happened. I told my nephews and I told my  
10 partner, Hey, I can't get a loan, but I'm not giving up.

11 So two, three days later my two nephews split,  
12 say, We don't want to be with you no more, and we want our  
13 money. I say I don't have no money to pay you. The money's  
14 there, but if you want to leave because I default, you free  
15 to leave.

16 How we going to get paid?

17 I says, Shopping center is 50 percent owned by  
18 you uncle and 50 percent by me. I have to feed my children  
19 first, and whatever left over, I'll be more than happy to  
20 give it to you. Okay. What do you want us -- what do you  
21 want to pay us for rent of our money?

22 We come to an agreement, I pay them 12 percent  
23 on their money, and 150,000 default because I don't fulfill  
24 my commitment. I accepted that. We wait until my partner,  
25 which is my brother, came. He's an older man. And we came

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1 up to Mr. Mohammed Hamed, I say, You want to follow them? He  
2 say, Yeah, I will follow them, but do you have any money to  
3 give? I say, Look, Mr. Hamed, you know I don't have no  
4 money. It's in the building, and I put down payment in the  
5 refrigeration. But if you want to follow them, if you don't  
6 feel I'm doing the best I can, if you want to follow them,  
7 you're free to follow them. I'll pay you the same penalty,  
8 75,000. I will give you 12 percent on your 400,000.

9 He says, Hey. If you don't have no money,  
10 it's no use for me to split. I'm going to stay with you.  
11 All right. I say, Okay. You want to stay with me, fine. I  
12 am with you, I am willing to mortgage whatever the  
13 corporation own. Corporation owned by me and my wife at that  
14 time.

15 Q. Uh-huh.

16 A. And my partner only put in \$400,000. That's all  
17 he put in, and he will own the supermarket. I have no  
18 problem. I told my partner, Look, I'll take you under one  
19 condition. We will work on this, and I'm obligated to be  
20 your partner as long as you want me to be your partner until  
21 we lose \$800,000. If I lose 400,000 to match your 400,000, I  
22 have all the right to tell you, Hey, we split, and I don't  
23 owe you nothing.

24 They say, Mr. Yusuf, we knows each other. I  
25 trust you. I keep going. Okay. Now, I told him about the

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

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

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

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

18 A. May I interrupt you, sir? I cannot build a roof  
19 before a foundation. The problem is you ask me who I am,  
20 where I come from. I am explaining myself. I want to show  
21 to you and the court that Mohammed Hamed is way before  
22 Plaza Extra was opened with me, he was my partner. And  
23 Mr. Idheileh, he himself knows, because the money he lend me  
24 when I open up Plaza Extra, he was getting paid from Wally.

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

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1 stay clean. You know what I mean, clean? I'm the final  
2 decision man. I don't give that to anybody. Excuse me. But  
3 when it come to money, I don't touch.

4 When I open up Plaza Extra Supermarket, who  
5 was in charge of the money at that time is Wally Hamed. When  
6 this gentleman, Mr. Idheileh, lend me his money as a friend,  
7 I have never signed for him. Who paid him? I never pay him  
8 back. My partner's son is the one who pay him back. And he  
9 knew, because he come to my office once or twice a week. And  
10 he's not the only one knew. Every single Arab in the Virgin  
11 Islands knew that Mr. Mohammed Hamed is my partner, way  
12 before Plaza Extra was opened.

13 Now, should I ask him or continue?

14 MS. VAZZANA: He's ready to give you a next  
15 question.

16 Q. (Mr. Adams) My question to you, sir, is there  
17 came a point in time that you and Idheileh started to, or  
18 started to have some discussions about Plaza Extra on  
19 St. Thomas, is that correct?

20 A. Repeat the question please.

21 Q. There came a point in time that you and  
22 plaintiff, Mr. Idheileh, entered into negotiation about a  
23 partnership, entering into a partnership with Plaza Extra on  
24 St. Thomas, is that correct?

25 A. I can answer that if I could explain it.

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