

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,

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

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

vs.

UNITED CORPORATION, *Defendant.*

Case No.: SX-2014-CV-287

Consolidated with

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

vs.

FATHI YUSUF, *Defendant.*

Case No.: SX-2014-CV-278

Consolidated with

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

Case No.: ST-17-CV-384

Consolidated with

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Case No.: ST-18-CV-219

**HAMED'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
RE HAMED'S H-163 WRONGFUL DISASSOCIATION CLAIM**

Hamed hereby respectfully submits his Proposed Findings of Fact and Conclusions of Law regarding the April 15, 2021, hearing on Hamed's Wrongful Disassociation Claim (H-163). Several preliminary comments are in order.

First, H-163 is based on 26 V.I.C. §122(b)(2)(i), which provides in part as follows:

(b) A partner's dissociation is wrongful only if:

.....

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

Second, in holding that Hamed is entitled to pursue his wrongful dissociation accounting claim (See June 2, 2020, Order at p. 26), the Master pointed out on p. 17 that wrongful disassociation "occurs when a partner ceases being involved in the partnership."

Third, the Master recognized that in order to find dissociation in this case, there would have to be a partnership for a definite term, as opposed to an at-will partnership, but as the Master pointed out, there was evidence of such a term, stating on p. 23:

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.

Thus, since there was testimony that would support a finding that the partnership was not just an at-will partnership, the Master denied summary judgment, holding 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.

Finally, in discussing the permitted recovery for this claim, the Master held on p. 25 of the same ORDER:

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 Judge Brady’s prior “Limitations Order” barring claims before September 17, 2006. *Id.* p. 28-29.

With these prior findings in mind, Hamed hereby submits his proposed Findings of Fact and Conclusions of Law, which Hamed respectfully submits support a Finding of wrongful disassociation by Yusuf and an award of \$1,377,573.60 in damages for this claim.

I. HAMAD’S PROPOSED FINDINGS OF FACT (H-163)

All references to the April 15th Hearing will be “Tr. ___” as there was only one volume of the hearing transcript, with exhibits referred to as “H-__”. Hamed respectfully submits these proposed Findings of Fact:

1. Fathi Yusuf testified that his partnership with Mohammad Yusuf began in 1980 or 1981, which had four partners, but with Hamed finally becoming a 50/50 partner with Yusuf after several reorganizations of those partners. Tr. 10-14.
2. Fathi Yusuf testified that there was a condition for Hamed to becoming a 50/50 partner, stating under oath at the hearing (Tr. 15 at lines 14-17):

Q. Okay. But you would agree that you told him you're obligated -- that you would be obligated as partner until you lost \$800,000, correct?

A. I tell you yes. (Emphasis added).

3. In this regard, Yusuf explained why this agreement was reached, stating (Tr. 21 at lines 5-10):

Q Mr. Yusuf, I just want to clarify one thing. You agree that Mohammad Hamed put his entire life savings into that 400,000 he gave you to create

the store, correct?

A Yes.

4. As Fathi Yusuf explained, either partner could voluntarily leave, but neither partner could simply throw the other one out, stating (Tr. 98 at lines 14-23):

Q Could you terminate the Partnership if he didn't want you to, by kicking him out?

A I didn't understand the question.

Q Well, I'll rephrase it. "Leaving" means you keep the Partnership, I'm gonna go do something else. The question is, could you tell him to get out of the Partnership, 'cause it's my store, any time you want?

A No, no. **We have to come to understanding and see how we could get out from each other.** (Emphasis added.)

5. Wally Hamed testified that he started working for the partnership in 1986, although the Plaza East store was not yet open. Tr. 22
6. Regarding his father's partnership with Fathi Yusuf, Wally Hamed testified as follows (Tr. 22-23 at lines 18-3):

Q Okay. And what was your understanding of the funds that your father had committed to this project? Was that used for construction or something else?

A It was used for construction and also for the store, for the interior of the store.

Q What was your understanding of your father's relationship with Mr. Yusuf?

A That they have a partnership, that he put in all his money, and they were partners until they lose \$800,000.

7. Wally Hamed also testified that the Plaza East store was also completed with bank loans that the partnership repaid from the store's proceeds. Tr. 23-24
8. Wally Hamed testified as to the competitiveness of the grocery business after Plaza East opened, testifying in part (Tr. 24 at lines 10-21):

We always had to be on top of our game. I mean, we had Grand Union and we had Super Foods, I believe, and Pueblo at the time. And we were the

new kids in town. We didn't know nothing, so-called. We didn't know much about operating a big supermarket, so we really had to be on top of our game. We were very competitive. We had to see what our competition would be doing on a weekly basis, on a daily basis. We always had to really get the best prices, the best service, the best displays, the best of almost everything that you think to maintain our competitiveness in the market to survive.

9. Wally Hamed testified that the partnership also paid for all improvements inside the store. Tr. 25
10. Wally Hamed also testified about the threat that Cost-U-Less created in 2005 by moving nearby, as Cost-U-Less had previously opened out west across from the then very successful Sunshine Supermarket, putting it out of business. Tr. 25-26.
11. As Wally Hamed explained, Cost-U-Less had a different kind of business that threatened Plaza East differently than the other nearby supermarkets, as it sold lots of bulk items that were cheaper than what Plaza's retail store sold. Tr. 26
12. As a result, Wally Hamed spent the next few years completely revamping the store, expanding its sales area, adding multiple frozen food cases (designed to sell bulk "value pack" products) and other refrigeration units, as well as expanding the fresh meat section and completely upgrading the deli. Tr. 26-28
13. These improvements improved sales by 25% even after Cost-U-Less opened. Tr. 28
14. Wally Hamed testified that these improvements were designed to last for many years and could not be removed, all of which the partnership paid for. Tr. 28-29.
15. Wally Hamed explained why the partnership did all of these improvements despite the fact that did not have a lease as follows (Tr. 29 lines 11-23):

Q And why would you make all these improvements from the Partnership if you didn't have a written lease for the premises?

A Because, really, as far as I know, we had an agreement. Mr. Yusuf and my dad had an agreement that they're partners. As long as they're partners and they don't lose \$800,000, they're still partners.

Q So as long as you have that agreement that the partnership can operate until it loses \$800,000, you don't really need the lease because you can operate the partnership?

A Yes.

16. Wally Hamed also explained that the partnership had to pay rent to United and in fact agreed to pay over \$5.2 million in back rent in 2012 before this dispute, which it would not have done if they thought Yusuf could remove them from the premises before the term of the partnership terminated. Tr. 29-31 and Hamed Exhibits 2 and 3.
17. Three days after paying the \$5.2 million in back rent, Yusuf sent Hamed a notice of dissolution, which was then followed by a draft agreement listing certain proposed terms and specifically referring to the Virgin Islands Revised Partnership Act. ("RUPA") Tr. 32-34 and Hamed Exhibits 4 and 5.
18. The partners negotiated a proper RUPA termination, but were unable to reach a resolution. Tr. 34
19. Then in August of 2012, Yusuf abandoned the negotiations and instead unilaterally removed \$2.7 million from the partnership's bank account, which had never happened before, but which Yusuf refused to return, instead using it to buy real property for his own family's business. Tr. 34-36
20. Thereafter, Hamed sued Yusuf, alleging that the unilateral removal of the funds violated the prior partnership agreement to only jointly remove funds. Tr. 35-36
21. Yusuf responded by vehemently denying the existence of the partnership, with Fathi Yusuf filing an affidavit averring that that there was no such partnership. Tr 36-39 and Exhibits 7 and 8
22. Wally Hamed then testified to multiple subsequent acts taken by Fathi Yusuf that did not try to properly end the Partnership under RUPA, but rather improperly denied the existence of the partnership, including (Tr. 39-40):
 - calling the police to remove the Hameds from the Plaza East premises as not being connected with the Partnership, but rather being trespassers;
 - unilaterally removing the Hameds from the Partnership bank accounts;
 - telling vendors not to deal with the Hameds, claiming they were not part of the Plaza East management;
 - unilaterally firing key employees who were witnesses to these acts, and similar unilateral actions.
23. These acts only stopped after Judge Brady finally entered a preliminary injunction following a full evidentiary hearing -- on April 25, 2013. Tr. 40
24. Wally Hamed then testified that the records of the tax assessor placed a value on the Plaza Extra Supermarket in 2012 of \$1,377,573.60 utilizing the total

square footage of the United Plaza shopping center in 2012, the tax assessor's valuation of the shopping center and the value attributable to the supermarket's premises based on its square footage. Tr. 43-48 and Exhibits 9, 10 and 11.

25. A demonstrative exhibit was then used by Wally Hamed to explain these calculations, which he explained were the ledger value of the Plaza East store when Yusuf wrongfully disassociated in 2012, of which Hamed would have a ledger value equal to half of that amount (Tr. 48 and Exhibit 12):

PLOT 4D AND 4C SION FARM

TOTAL ASSESSED VALUE OF IMPROVEMENTS- 2012:	\$5,931,500
TOTAL SQUARE FOOTAGE:	149,995
RATE PER SQUARE FOOT: (\$5,931,500/149,995)	\$39.54 sq. ft.

**CALCULATION OF THE PARTNERSHIP
LEDGER ENTRY FOR PLAZA EAST SUPERMARKET**

TOTAL SQUARE FOOTAGE:	69,680
VALUE PER SQUARE FOOT:	\$39.54 sq. ft.
TOTAL VALUE PLAZA EAST SUPERMARKET:	\$2,755,147.20
HAMED CLAIM ($\frac{1}{2}$ X \$2,755,147.20):	\$1,377,573.60

26. As Wally Hamed noted, despite Yusuf's denial of the existence of the partnership in 2012, the partnership still had not lost \$800,000, stating (Tr. 63-64 lines 18-6):

Q Mr. Hamed, you heard the testimony about your father putting in \$400,000 in the early 1980s in to this project?

A Yes, I heard. Yes.

Q And was that his entire life savings?

A Yes, it sure was.

Q And is that the \$400,000 that along with Mr. Yusuf's \$400,000 the seed money that created the Plaza Supermarket Partnership that exists in 2012?

A Yes, sir.

Q And as of late 2012, did the Partnership yet to lose \$800,000?

A. Absolutely not. We had many millions of dollars in the bank.

Q And the reason that you continued to put money into the Partnership to keep the store in the pristine condition it was is because it was your understanding that you would agree to operate that partnership until the \$800,000 is lost?

A Yes, sir.

27. Mafi Hamed testified that he worked as a manager of the Plaza East store for 20 years. Tr. 65-66

28. Mafi Hamed testified in detail about multiple things he oversaw to improve the Plaza East store after Cost-U-Less opened in 2005, including:

- Recoating the interior raw steel girders with an epoxy sealer after grinding each steel beam to remove any rust, requiring multiple employees to cover the areas in order to clean the beams and then seal them, using grinding tools, scissor lifts and scaffolding (Tr. 66-67);
- Maintaining and upgrading all water pumps, maintaining and cleaning the cisterns and doing whatever else was needed to keep water flowing to the store as well as the entire shopping center (Tr. 67-69);
- Repairing all cracks on the exterior roof over the store (Tr. 69);
- Maintaining and repairing the shopping center's exterior parking lot lights (Tr. 69-70);
- Maintaining and upgrading the 160 security cameras and associated equipment in the store, as well as throughout the entire shopping center exterior area, including the back area that was not part of the Plaza East store (Tr. 70);
- Maintaining and cleaning the exterior shopping center sidewalks areas, using store employees to scrub these sidewalks at night (Tr 71).

29. Mafi Hamed testified that these items were not something a tenant would do, but the partnership still did it since the partnership was on-going. Tr. 67, 71

30. When the partnership terminated, the Plaza East store, as well as the areas of the shopping center around it, was in impeccable condition so that it could remain open under its new ownership without having to close for even one day,

as noted by Mafi Hamed at the April 15, hearing (Tr. 72-73 at lines 17-23):

Q And when the Partnership left the Plaza East store, were all these items in place?

A Yeah, they were.

Q And what was the condition of the store when you left?

A The condition of the store was great condition. I mean, my job, the things that I did, I've done not only to -- I mean, my job was to keep the store well maintained and constant improvements, to keep it modern, because we had to compete with other supermarkets. I mean, my efforts not only went in to keeping the supermarket well maintained, but also the shopping center. I put a lot of effort in to taking care of the shopping center, too, so when customers come in, I mean, we want to attract the customers. We have to make them feel that the place is clean, well-kept, and safe.

Q And when you left the Plaza East Supermarket -- when the Partnership left the Plaza East Supermarket, did the store have to be closed for it to be open the next day for United to operate? Was it closed for any period of time?

A No, it wasn't closed.

Q Ready to go?

A Ready to go, one hundred percent.

31. When questioned why the partnership should not be treated like any other tenant vacating its premises, Mafi Hamed explained that you have to look at the agreement of the parties and here the agreement was for the partnership to last forever (i.e., until it lost \$800,000, which by that time it would not do). Tr. 78-79

32. Mafi Hamed also explained how similar improvements done at the Plaza West store were different, as the Hamed and Yusuf families are 50/50 owners of that property and receive substantial rent from the Plaza West tenant, while only the Yusuf's received the benefits of the improvements at the Plaza East store since they are the sole owners of that property. Tr. 79-81¹

¹ Indeed, the extensive and very expensive multi-year project coating the structural steel was not a maintenance item that one would do for a few years, but rather is a preventative measure to protect the facility for a long time into the future.

33. Fathi Yusuf confirmed that the Plaza East store never closed after the partnership terminated, nor did it pay rent to United after that either. Tr. 101
34. While Fathi Yusuf tried to justify his unilateral conduct in trying to terminate the partnership due to the alleged misconduct of Wally Hamed (Tr. 95-97), he did not seek a court order to address these allegations of misconduct in order to avoid a claim of wrongful disassociation.²

II. HAMED'S PROPOSED CONCLUSIONS OF LAW (H-163)

Hamed respectfully submits the following Proposed Conclusions of Law:

1. Fathi Yusuf and Mohammad Hamed were part of a partnership in 1980 with several other individuals who were involved in the creation of the Plaza East Supermarket.
2. After two of the partners left, Fathi Yusuf agreed to continue the partnership, but subject to an express agreement that the partnership would continue until it lost \$800,000, which was based on Mohammad Hamed's agreement to put his life savings of \$400,000 into the partnership to create the Plaza East Supermarket.
3. Thus, there was a partnership for a specific term—it would operate until it lost the partners' \$800,000 investment, at which time it would cease if that occurred.
4. As such, the partnership is not an at-will partnership, but one for a specific term, designed to protect Mohammad Hamed from Fathi Yusuf otherwise having the absolute right to simply take the value of Hamed's investment at no cost to him, as he owned the shopping center where the supermarket was located, for which the partnership did not have a lease.
5. Indeed, this fact 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 so long as his initial investment was never lost.

² As will be noted in the Conclusions of Law, the *Official Comments* to RUPA point out that RUPA section 602 (26 V.I.C. § 122) was amended to expressly prohibit such "self-help", requiring an order from a court to avoid a damage claim for wrongful disassociation:

A partner wishing to withdraw prematurely from a term partnership for any other reason, **such as another partner's misconduct**, can avoid being treated as a wrongfully dissociating partner by applying to a court under Section 601(5)(iii) to have the offending partner expelled. Then, the partnership could be dissolved under Section 801(2)(i) or the remaining partners could, by unanimous vote, dissolve the partnership under Section 801(2)(ii).

6. Based on the fact that the partnership agreement provided that the partnership would continue until it lost \$800,000, the partnership put substantial funds into its business as well as the surrounding shopping center, even though the partnership had no lease.
7. While Yusuf tried to negotiate a termination of the agreement in 2012, he was unable to do so.
8. Moreover, the partnership had not lost \$800,000, as it had substantial funds in its bank account in 2012.
9. The Master found that Fathi Yusuf then wrongfully disassociated from his partnership with Mohammad Hamed by multiple acts in the 2012-2013 time period as follows:
 - Unilaterally removing partnership funds for personal use;
 - calling the police to remove the Hamed's from the Partnership's premises;
 - unilaterally removing the Hamed's from the Partnership's bank accounts;
 - telling vendors not to deal with the Hamed's as part of the Partnership management;
 - unilaterally firing key Partnership employees and similar unilateral actions.
10. This conduct continued until enjoined by the Superior Court, which ultimately led to the dissolution of the partnership pursuant to RUPA -- due to the acrimony created by these wrongful acts.
11. Regarding a partnership for a specific term, 26 V.I.C. §122(b)(2)(i) provides as follows:

(b) A partner's dissociation is wrongful only if:

. . . .

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking
12. As noted in the Master's June 2, 2020, Order (at p. 26), wrongful disassociation "occurs when a partner ceases being involved in the partnership."
13. Thus, the Master finds that Fathi Yusuf is liable for wrongful disassociation, which the Master finds ultimately led to the partnership losing its premises at the Plaza East location, allowing Fathi Yusuf to be able to re-open the supermarket the next day, operating with all of the assets created by the prior investment of the partnership.

14. Further, Yusuf's contention that he only started denying the existence of the Partnership because of some alleged misconduct by Hamed does not excuse this conduct, as one cannot deny a partnership because of such an allegation—but, rather, must pursue a proper end as required by 26 V.I.C. §122 (RUPA § 602)
15. In fact, Fathi Yusuf would be unjustly enriched if Mohammad Hamed were required to simply forfeit the value of the premises in violation of the express agreement that the partnership would continue to operate so long as it did not lose \$800,000.
16. As noted by the V.I. Supreme Court in *Maso v. Morales*, 57 V.I. 627, 635 (2012), while a claimant must establish the value of his or her loss, this computation need not be established with exactitude, citing the Restatement (Second) Of Torts § 912 (“One to whom another has tortuously caused harm is entitled to compensatory damages for the harm if, but only if, he establishes by proof the extent of the harm and the amount of money representing adequate compensation **with as much certainty as the nature of the tort and circumstances permit.**” (Emphasis added)).³
17. At the April 15, 2021, hearing, it was shown that the real property taxes for 2012 (when the wrongful act occurred) had a per square footage value of the buildings at the United Shopping Center of \$39.54 per sq. ft., calculated by dividing the full \$5,931,500 assessed value by the total square footage of the shopping center of 149,995 ft. As the Plaza East Supermarket is 69,680 square feet, multiplying that figure times the tax assessor's sq. ft. value in 2012

³ See also, *Walters v Walters*, 60 VI 768, 778 (2014), where the V.I. Supreme Court held in determining the soundest law in the Virgin Islands for tort claims:

Tort law serves two fundamental purposes: “deterrence and compensation.” *Dickhoff v. Green*, 836 N.W.2d 321, 336 (Minn. 2013); *Jackson v. Chandler*, 61 P.3d 17, 19 (Ariz. 2003) (“[T]he basic policies underlying tort law [are] to deter wrongful conduct and compensate victims.” (quoting *DeLoach v. Alfred*, 960 P.2d 628, 633 (Ariz. 1998))); *Steigman v. Outrigger Enters., Inc.*, 267 P.3d 1238, 1247 (Haw. 2011) (“[T]ort law seeks to prevent injury where possible by providing incentive to deter negligent acts.”); see also Jeffrey S. Quinn, Comment, *Does Mass Product Tort Litigation Facilitate or Hinder Social Legislative Reform? A Comparative Study of Tobacco Regulation*, 9 RUTGERS J.L. & PUB. POL'Y 106, 169–70 (2012) (“The deterrent theory of tort law is rather simple: tort law threatens people with having to pay for the injuries they produce; therefore, people will alter their behavior by taking into account the interests of others in a socially desirable and less injury-producing way.”).

(\$39.54) provides the accounting ledger entry for this item, which is \$2,755,147.20.

18. Using this calculation, the Master finds that the ledger entry value of Hamed's partnership share for the right to continue using the premises by the Partnership, which it was deprived of by the wrongful dissociation to be one-half of that total figure, or \$1,377,573.60.
19. As for damages, based on the tax assessor's valuation of the premises where the Plaza East supermarket was located, the Master finds that the ledger entry value of the premises use as of 2012 was \$2,755,147.20, of which Hamed's share was \$1,377,573.20.
20. Thus, the Master awards \$1,377,573.60 in damages on Hamed's claim (H-163) due to Yusuf's wrongful disassociation from the partnership.

Dated: May 19, 2021

/s/ Joel H. Holt

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CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 6-1(e)

I hereby certify that the above document meets the requirements of Rule 6-1(e) and was served this 19th day of May, 2021. I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross

Special Master

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