

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

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

**UNITED'S MOTION FOR RECONSIDERATION OF  
MAY 5, 2021 MEMORANDUM OPINION  
AS TO Y-2 – RENT AWARD AS TO BAY 5**

The Master's May 5, 2021 Memorandum Opinion awarded United Corporation ("United") rent from the Partnership for its use of Bay 5 and Bay 8 at the United Shopping Center for specified periods of time. In this Motion for Reconsideration, United respectfully asks the Master to reconsider one component of his May 5 Opinion – namely, his decision to award rent for Bay 5 at the \$5.55 rate<sup>1</sup> charged by United to the Partnership for Bay 1 in the 1994 to 2001.<sup>2</sup> United believes the evidence at the February 4 hearing showed that an equitable rate for the Bay 5 space is at least \$10 per square foot per year.

Bay 5 is located immediately adjacent to the entrance to the United Shopping Center, and is thus a prime retail location at the shopping center. *See* United's Trial Exhibit 7 – United Shopping Center Floorplan - for February 4, 2021 Hearing. As the closest retail space to the Plaza Extra entrance, it stands to benefit more than any other bay from the large volume of Plaza Extra customers who enter and exit the supermarket. *See* February 4, 2021 Hearing Transcript, p. 19, lines 15-24 – Yusuf's testimony discussing rent premium paid by Diamond Girl for Bay 5 because of its preferred location. In this respect, Bay 5 is very different from Bay 8,<sup>3</sup> which is located in

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<sup>1</sup>The dollar rental rates refer to the price per square foot of space per year. As Judge Brady found in his April 27, 2015 opinion awarding rent to United for Bay 1, \$5.55 per square foot per year is the rental rate that was charged to the Partnership during the 1994 to 2004 rental period. *See Hamed v. Yusuf*, 2015 WL 13839453 (V.I. Super. 2015).

<sup>2</sup>Under V.I. R. Civ. P. 6-4, a motion for reconsideration must be brought within 14 days of the order for which reconsideration is sought. Rule 6(a)(1)(b), the rule governing computation of time, provides that any period of 14 days or less means 14 business days. May 25 is the fourteenth business day since May 5, and United's Motion for Reconsideration is therefore timely.

<sup>3</sup>The Master accepted United's rent calculation for Bay 8, which was based on the \$6.15 rental rate charged by Riverdale, a tenant which began occupying Bay 8 on October 1, 2002. This Motion for Reconsideration is, therefore, confined to the Master's determination of a reasonable rent for Bay 5.

a corner of the shopping center and whose entrance was partially concealed by the shopping center wing that runs perpendicular to the wing containing Bays 1, 5 and 8. *See id.*

The Master found that there was an “absence of any credible evidence to establish a reasonable and fair rental rate” for Bay 5. Memorandum Opinion at p. 41. United believes this was “clear error” because United did introduce evidence of what a tenant actually paid for Bay 5. As the Master found, the lease between Diamond Girl and United that was introduced at the February 4 hearing indicated that Diamond Girl began occupying Bay 5 on September 1, 2001 and was paying \$2,604 per month, which is \$31,250 per year or \$10.00 per square foot per year for the 3,125 square foot space. *See* Master’s Finding of Fact No. 18 in Master’s May 5, 2021 Memorandum Opinion, p. 18; *see also* United’s Trial Exhibit 11, p. 6, ¶ 10 – Lease for Bay 5 to Diamond Girl. United submits that, at a minimum, the Master should have used the \$10 rental rate as the reasonable rent for Bay 5, which would have yielded an aggregate rent for the space for the 7 year, 3-month period of use of \$226,562.50.<sup>4</sup> The Master awarded approximately \$100,000 less in Bay 5 rent — \$125,742.19 – without explaining why he regarded the Diamond Girl lease rate for that very bay as not credible evidence of a reasonable rent, and United is aware of no reason why it is not credible. *See* Memorandum Opinion at p. 44.

Hamed argued only that the Diamond Girl lease was not strong evidence because Diamond Girl was a “retail tenant” with a “written lease,” as opposed to an at-will wholesale tenant, but these contentions do not withstand analysis. *See* Hamed’s February 23 Post-Hearing Filing re: Y-2 and Y-4, p. 13, proposed conclusion no. 7. As Mr. Yusuf made clear in his trial testimony, the

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<sup>4</sup>United sought in its proposed findings and conclusions to adjust the \$10 rate up modestly to \$12 because of certain charges assumed by Diamond Girl in its lease. *See* United’s February 23, 2021 Proposed Findings and Conclusions, p. 14, proposed conclusion no. 33, and note 6. United is no longer seeking that \$2 upward adjustment in this Motion for Reconsideration.

United Shopping Center was designed and built to be a retail shopping center, not a warehouse facility. *See* February 4, 2021 Transcript, p. 19, lines 8-17. In fact, having warehouse space at a shopping center is not advantageous to the landlord and the tenant as it leads to reduced customer traffic. What is reasonable rent should therefore be determined by reference to the market rental rates for what actually existed at the United property – namely, space at a retail shopping center, not space at a warehouse facility. Wally Hamed, who was then managing Plaza Extra East, made the decision without consulting with Mr. Yusuf to break down the wall and appropriate the valuable Bay 5 retail space to store supermarket inventory. If he wanted to do that, then it is only fair that the partnership pay the higher retail rental rates for that space, not the hypothetical lower rates for warehouse space at that location. As for Hamed’s contention that a month-to-month lease commands a lower market rate than a longer term lease, the Court can take judicial notice that precisely the opposite is the case. The market rate for month-to-month leases is nearly always higher than the rate for a lease of a term of 6 months, 1 year, or several years.

In addition to the Master’s failure to use the Diamond Girl lease rate as clear evidence of a reasonable rental rate, United respectfully submits that the Master’s use of the \$5.55 rental rate for Bay 1 as a proxy for a reasonable rent for Bay 5 was also erroneous. The unrebutted evidence shows that the \$5.55 rate for Bay 1 was far below market rent from 1994 forward – i.e., for the entire period in which the Partnership used Bay 1. Fathi Yusuf testified that after the Plaza Extra store burned down in 1992 and before it reopened in 1994, he agreed with Mohammad Hamed to keep the rent for Bay 1 at the “much lower than market rate of \$5.55 per square foot for a ten-year period.” *See* United Trial Exhibit 2, p. 3, ¶ 5. Use of the \$5.55 rate that is far below market for a retail space that is more than 20 times larger than Bay 5 to determine the reasonable rent for Bay 5 is not tenable.

It is also significant that after that ten-year period expired, the rent for Plaza Extra East (Bay 1) was increased according to a rent formula that calculated rent paid at Plaza Extra Tutu Park as a percentage of sales at that store, and then applied that percentage to Plaza East sales to determine rent. *See* United Trial Exhibit 3 – Percentage of Sales Calculation for Rent. As Judge Brady found in his rent order, the average monthly rent under that formula came to \$58,791.38 per month. *See Hamed v. Yusuf*, 2015 WL 13839453, p. \*6 (V.I. Super. 2015). Multiplying that monthly average by 12 months to get an annual average rent amount, and then dividing that sum by the 69,680 square feet that make up Bay 1, yields a price per square foot of \$10.13. In other words, the effective square foot rate for Bay 1 under the rent formula in effect from 2004 forward was \$10.13. The market retail rental rate for a 69,680 square foot space occupied by an anchor tenant is normally going to be less than the rate for a far smaller retail space like the 3,125 square foot Bay 1. This is further evidence that a reasonable rent for Bay 5 is \$10 at the very least and that the Master erred by using the below market \$5.55 rate for Bay 1 that was in effect from 1994 to 2004.

For all of the foregoing reasons, United respectfully requests that the Master grant his Motion for Reconsideration and amend his May 5 Order by ruling that United is entitled to a reasonable rent of \$10 per square foot per year for Bay 5, which translates into a total rent award for Bay 5 of \$226,562.50. A proposed order is attached.

**DUDLEY NEWMAN FEUERZEIG, LLP**

**DATED:** May 25, 2021

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**CERTIFICATE OF SERVICE**

It is hereby certified that on this 25<sup>th</sup> day of May, 2021, I caused a true and exact copy of the foregoing **UNITED’S MOTION FOR RECONSIDERATION OF MAY 5, 2021 MEMORANDUM OPINION AS TO Y-2 – RENT AWARD AS TO BAY 5** to be served upon the following via Case Anywhere docketing system:

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