

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

**MOHAMMAD HAMED, BY HIS  
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED  
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

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

COUNTERCLAIM DEFENDANTS.

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**WALEED HAMED, AS EXECUTOR OF THE  
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

**UNITED CORPORATION,**

DEFENDANT.

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**MOHAMMAD HAMED,**

PLAINTIFF,

v.

**FATHI YUSUF,**

DEFENDANT.

Civil No. **SX-12-CV-370**

**ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, PARTNERSHIP  
DISSOLUTION, WIND UP, and  
ACCOUNTING**

CONSOLIDATED WITH

Civil No. **SX-14-CV-287**

**ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. **SX-14-CV-378**

**ACTION FOR DEBT and  
CONVERSION**

## **MEMORANDUM OPINION**

**THIS MATTER** came before the Special Master (hereinafter “Master”) on United’s motion for reconsideration of the Master’s May 5, 2021 memorandum opinion and order and judgment, filed on May 25, 2021, as to the past due rent to United for Bay 5 of the United Shopping Plaza.<sup>1</sup> In response, Hamed filed an opposition. As of the date of this order, United has not filed a reply.

### **BACKGROUND**

The past due rent to United for Bay 5 of the United Shopping Center was part of Yusuf Claim No. Y-2: past due rent to United for Bay 5 and Bay 8 of the United Shopping Plaza (hereinafter “Bay 5” and “Bay 8,” respectively). On February 4, 2021, the parties appeared for a hearing on Yusuf Claim No. Y-2 and Yusuf Claim No. Y-4. United and Hamed each presented witness testimony and exhibits. More specifically, the Master heard oral testimony from Fathi Yusuf, Maher Yusuf, and Waleed Hamed. At the conclusion of the hearing, the Master took the matter under advisement and ordered United and Hamed to file their respective proposed findings of facts and conclusions of law. Thereafter, the parties timely filed their post-hearing filings.

On May 5, 2021, the Master entered a memorandum opinion (hereinafter “May 5, 2021 Opinion”) whereby the Master found that United is entitled to rent from the Partnership for the use of Bay 5 and Bay 8 in the total amount \$647,851.57 and that United is not entitled to prejudgment interest for past due rent for Bay 5 and Bay 8, and contemporaneously entered an order and

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<sup>1</sup> The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan.) The Master finds that that the past due rent to United for Bay 5 of the United Shopping Center falls within the scope of the Master’s report and recommendation given that said past due rent is an alleged debt owed by the Partnership to United.

judgment consistent with said memorandum opinion (hereinafter “May 5, 2021 Judgment”). In the May 5, 2021 Opinion, the Master explained:

#### B. Rent Calculation

In the Rent Order, the Court, based on Yusuf’s September 9, 2013 affidavit (¶¶ 4-6) and Yusuf’s April 2, 2014 deposition (86:8-12), concluded that the rent for Bay 1 was calculated at the rate of \$5.55 per square foot for the period January 1, 1994 to May 4, 2004.<sup>34</sup> (Rent Order, p. 9.) The Court did not differentiate between the retail use versus the warehouse use of Bay 1 yet the testimony indicates that Bay 1 was utilized for both purposes.<sup>35</sup> In the absence of any credible evidence to establish a reasonable and fair rental rate for the Partnership’s use of Bay 5 and Bay 8, the Master will exercise the significant discretion he possesses in fashioning equitable remedies as the need arises and use this rate for the evaluation of the rent claimed by United for Bay 5 and Bay 8.

It is undisputed that the square footage of Bay 5 is 3,125 square feet and the square footage of Bay 8 is 6,250 square feet. As noted above, credible evidence indicates that the Partnership exercised dominion and control over Bay 5 and Bay 8 for the following periods: Bay 5-May 1, 1994 through July 31, 2001, which totals 7 years and 3 months, and Bay 8-May 1, 1994 through September 30, 2002 and April 1, 2008 to May 30, 2013, which totals 13 years and 7 months.<sup>36</sup> Thus, applying \$5.55 as the appropriate rate, the total rent due for Bay 5 would be \$125,742.19 for the rental period May 1, 1994 through July 31, 2001 and the total rent due for Bay 8 would be \$713,984.36 for the rental periods May 1, 1994 through September 30, 2002 and April 1, 2008 through May 30, 2013.<sup>37</sup> In comparison to those numbers, the Master finds: (i) United’s claim for past due rent for Bay 5 for the aforementioned rental period in the total amount of \$271,875.00 unreasonable and not supported by evidence and (ii) United’s claim for past due rent for Bay 8 for the aforementioned rental periods in the total amount of \$522,109.38<sup>38</sup> reasonable and supported by evidence. Accordingly, the Master will adjust United’s claim for the total past due rent for Bay 5 for the aforementioned period from \$271,875.00 to \$125,742.19, an amount that is reasonable and supported by evidence, and keep United’s claim for the total past due rent for Bay 8 for the aforementioned rental periods at \$522,109.38, for a total of \$647,851.57.

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<sup>34</sup> In the Rent Order, the Court also concluded that, for the period January 1, 2012 through September 30, 2013 and for the period October 1, 2013 until the date that Yusuf assumed sole possession and control of Plaza Extra-East, rent for Bay 1 was to be calculated at the rate of \$58,791.38 per month based on the sales of Plaza Extra-Tutu Park in St. Thomas. However, for the purpose of evaluating the rent claimed by United for Bay 5 and Bay 8, the Master finds this monthly rate inapplicable and will not use it in his evaluation.

<sup>35</sup> At the February 4, 2021 hearing, Maher Yusuf and Waleed Hamed testified to the following:

- Q Okay. And do you recall the circumstances that led to the use of Bay 5?
- A [Maher Yusuf] Yeah. We were tight on space. **The warehouse for Plaza East was not big enough**, and we were forced to use the space.
- ...
- Q Okay. Exhibit 7. Where on Exhibit 7 -- can you describe where you knocked through the wall, you and Wally knocked through the wall.
- A Well, right in the corner, right below the arrow a little bit. A little below the arrow
- 
- Q Okay.
- A -- facing the store. That was the warehouse for the store.
- Q **Okay. So that little section to -- we're looking at it -- would be maybe behind the Bays 2, 3 and 4. That's the warehouse component of the Plaza Extra store?**
- A **Yes.**
- Q Okay.  
(February 4, 2021 Hearing Tr. 118:7-11, 119:1-14) (emphasis added.)
- Q Okay. And Mr. Yusuf, your father, described a little bit of the warehousing needs for the current store. Can you just give us some understanding of how much warehousing is needed for the current Plaza Extra East store.
- A **The Plaza Extra East store is -- the warehouse for it is too small for the size retail store it has.** Remember, we have to bring all these goods from the mainland, and you bring them in 40-foot containers. You need space. Some things we buy in trailer loads -- one item we buy in trailer loads, and...
- (February 4, 2021 Hearing Tr. 125:7-14-25) (emphasis added.)
- Q Okay. Well, let me ask it like this. At 2008, April of 2008, Plaza East had no need for Bays 5 and 8, did it? If it needed to store stuff, it could do it on the second floor of Plaza West, correct?
- A [Maher Yusuf] 2008. Let me get familiar with -- no. **The warehouse for Plaza is small.**
- Q So at Plaza West --
- A **You cannot store anything upstairs.**
- Q Okay.
- A **Remember, upstairs is only made -- you cannot store sodas upstairs, you cannot store flour upstairs, you cannot store corned beef upstairs; all this is heavy product; that's a second floor. And we didn't have enough space on the bottom floor, so they used Bay 8 when they buy trailer loads. I mean, at one time we bought -- my dad said eight trailers of Bounty. We bought 12 trailers of Bounty between the two stores.**
- Q But Plaza West, half the store is grocery store and the other half is warehouse on the first floor, isn't it?
- A Plaza West, half -- no.

Q What's your percentage between store and warehouse on the first floor of Plaza West?

A It depends on what kind of warehouse you're talking about. There's two types of warehouse. We have cold storage warehouse, and we have frozen warehouse, and we have light product warehouse, and we have heavy product warehouse --

Q How much of Plaza West --

A -- items that are there.

Q How much of Plaza West is store part that customers use?

A Plaza West, I believe it was 46,000 or 44,000 square foot, and the rest of it -- that's walking space for the customers. And I think the rest of it was about 97,000 square foot. So it was more product area, cold storage, frozen storage, and (February 4, 2021 Hearing Tr. 147:12-148:25) (emphasis added.)

A **Plaza East warehouse is so small compared even to St. Thomas.** The warehouse is too small, so it needed some warehouse space. So, you know, that's why we built Plaza West so big, to help Plaza East with all that, to accommodate a lot of inventory.

(February 4, 2021 Hearing Tr. 155:7-11) (emphasis added.)

Q And did you have somewhere else that you could have stored it if you didn't put it in Bay 5?

A [Waleed Hamed] At the time, if he didn't, we would make accommodations upstairs. You see, everybody is thinking that -- or everybody is stating that Plaza East only had that small space warehouse on the bottom floor. Well, what about the second story that we have at Plaza East, all that empty space up there?

(February 4, 2021 Hearing Tr. 160:16-24) (emphasis added.)

Q Okay. And showing you Exhibit Number J, by the time this letter came, Bay 5 had a store in it; Bay 8 still was empty. What did you do with the items in Bay 8 after you received that letter?

A [Waleed Hamed] We took that -- whatever merchandise that was really not significant and we moved it into the Plaza East warehouse.

Q And that's what you would have done if you'd known they were charging you rent long before that?

A Absolutely. Absolutely.

(February 4, 2021 Hearing Tr. 162:14-24) (emphasis added.)

<sup>36</sup> The month of May 2013 was a day short of the full month since it ended on May 30, 2013 instead of May 31, 2013. Nevertheless, for the purpose of the calculation of rent for Bay 8, the Master will treat May 1, 2013 through May 30, 2013 as a full month to keep the numbers simple.

<sup>37</sup> The rent calculation for Bay 8 is as follows:

$\$5.55 \times 6,250 \text{ sq. ft.} = \$34,687.50 \text{ per year}$   
 $\$34,687.50 \times 13 \text{ years} = \$450,937.50$

$$(\$450,937.50/12 \text{ months}) \times 7 \text{ months} = \$263,046.88$$
$$\$450,937.50 + \$263,046.88 = \$713,984.38$$

<sup>38</sup> \$323,515.63 (United's claim for the past due rent for Bay 8 for the rental period May 1, 1994 through September 30, 2002) + \$198,593.75 (United's claim for the total rent due for Bay 8 for the rental period April 1, 2008 through May 30, 2013) = \$522,109.38.

## **DISCUSSION**

In its motion, United noted that “[t]he Master accepted United’s rent calculation for Bay 8, which was based on \$6.15 rental rate charged by Riverdale, a tenant which began occupying Bay 8 on October 1, 2002” and that, “[t]his Motion for Reconsideration is, therefore, confined to the Master’s determination of a reasonable rent for Bay 5.” (Motion, p. 1.)

Upon review of the May 5, 2021 Opinion, it has come to the Master’s attention that there was a mistake arising from oversight—to wit, the Master’s determination of the reasonableness of the total past due rent for Bay 8 was based on the incorrect rent calculation for Bay 8. As noted above, in the May 5, 2021 Opinion, the Master found that “applying \$5.55 as the appropriate rate, the total rent due for Bay 5 would be \$125,742.19 for the rental period May 1, 1994 through July 31, 2001 and the total rent due for Bay 8 would be \$713,984.36 for the rental periods May 1, 1994 through September 30, 2002 and April 1, 2008 through May 30, 2013.” (May 5, 2021 Opinion, p. 43.) The Master noted that, as to Bay 8, “[t]he month of May 2013 was a day short of the full month since it ended on May 30, 2013 instead of May 31, 2013” but “[n]evertheless, for the purpose of the calculation of rent for Bay 8, the Master will treat May 1, 2013 through May 30, 2013 as a full month to keep the numbers simple.” (Id.) The May 5, 2021 Opinion provided the rent calculation for Bay 8 as follows:<sup>2</sup>

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<sup>2</sup> The May 5, 2021 Opinion inadvertently left out the rent calculation for Bay 5, but it was based on the following:

$$\$5.55 \times 3,125 \text{ sq. ft.} = \$17,343.75 \text{ per year}$$
$$\$17,343.75 \times 7 \text{ years} = \$121,406.25$$

$$\begin{aligned} \$5.55 \times 6,250 \text{ sq. ft.} &= \$34,687.50 \text{ per year} \\ \$34,687.50 \times 13 \text{ years} &= \$450,937.50 \\ (\$450,937.50/12 \text{ months}) \times 7 \text{ months} &= \$263,046.88 \\ \$450,937.50 + \$263,046.88 &= \$713,984.38 \end{aligned}$$

(Id., at p. 43 n. 37.)

The mistake was that, instead of using the annual rent amount (\$34,687.50) and dividing it by 12 months to get the monthly rent amount, the total rent amount for 13 years (\$450,937.50) was used, and resulted in an incorrect monthly rent amount for 7 months (\$260,046.88), which ultimately resulted in the Master erroneously concluding that the “total rent due for Bay 8 would be \$713,984.36” for the aforementioned rental periods, and thereby erroneously finding that “United’s claim for past due rent for Bay 8 for the aforementioned rental periods in the total amount of \$522,109.38 reasonable and supported by evidence,” and thus keeping “United’s claim for the total past due rent for Bay 8 for the aforementioned rental periods at \$522,109.38.” (Id, at pp. 43-44) (footnote omitted).

However, the Master now acknowledges that the correct rent calculation for Bay 8 should be as follows:

$$\begin{aligned} \$5.55 \times 6,250 \text{ sq. ft.} &= \$34,687.50 \text{ per year} \\ \$34,687.50 \times 13 \text{ years} &= \$450,937.50 \\ (\$34,687.50/12 \text{ months}) \times 7 \text{ months} &= \mathbf{\$20,234.38} \\ \$450,937.50 + \mathbf{\$20,234.38} &= \mathbf{\$471,171.88} \end{aligned}$$

Under the correct calculation—again, applying \$5.55 as the appropriate rate, and using the annual rent amount (\$34,687.50) and dividing it by 12 months to get the correct monthly rent amount—the total rent due for Bay 8 for the aforementioned rental periods would be \$471,171.88. In

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$$\begin{aligned} (\$17,343.75/12 \text{ months}) \times 3 \text{ months} &= \$4,335.94 \\ \$121,406.25 + \$4,335.94 &= \$125,742.19 \end{aligned}$$

comparison to this number, the Master finds that United's claim for past due rent for Bay 8 for the aforementioned rental periods in the total amount of \$522,109.38 (\$323,515.63 for the rental period May 1, 1994 through September 30, 2002, plus \$198,593.75 for the rental period April 1, 2008 through May 30, 2013) unreasonable and not supported by evidence. Accordingly, the Master will adjust United's claim for the total past due rent for Bay 8 for the aforementioned rental periods from \$522,109.38 to \$471,171.88, an amount that is reasonable and supported by evidence.

Based on the foregoing, the Master finds that United is entitled to past due rent from the Partnership for the use of Bay 5 and Bay 8 in the total amount of \$496,914.07 (125,742.19, the adjusted total past due rent for Bay 5, plus \$471,171.88, the adjusted total past due rent for Bay 8),<sup>3</sup> and not in the total amount of \$647,851.57, which was based on the incorrect rent calculation for Bay 8. Accordingly, consistent with this Memorandum Opinion, the Master will make the necessary corrections to the May 5, 2021 Order and May 5, 2021 Judgment pursuant to Rule 60 of the Virgin Islands Rules of Civil Procedure. V.I. R. Civ. P. 60(a) ("The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.").

### **CONCLUSION**

In the May 5, 2021 Opinion, there was a mistake arising from oversight—the Master's determination of the reasonableness of the total past due rent for Bay 8 was based on the incorrect rent calculation for Bay 8. Accordingly, the Master will enter an order and judgment consistent

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<sup>3</sup> In the May 5, 2021 Opinion, the Master noted that he "will adjust United's claim for the total past due rent for Bay 5 for the aforementioned period from \$271,875.00 to \$125,742.19, an amount that is reasonable and supported by evidence." (May 5, 2021 Opinion, p. 44.) Thus, \$125,742.19 plus \$471,171.88 equals \$496,914.07.



with this Memorandum Opinion to correct the aforementioned mistake in the May 5, 2021 Order and May 5, 2021 Judgment pursuant to Rule 60 of the Virgin Islands Rules of Civil Procedure. In light of the correction, the Master will give United the opportunity to supplement its motion for reconsideration in the event that United wishes to extend his motion for reconsideration to the Master's determination of a reasonable rent for Bay 8. At this juncture, the Master will reserve ruling on United's motion for reconsideration. An order and judgment consistent this Memorandum Opinion will be entered contemporaneously herewith.

**DONE this 7<sup>th</sup> day of June, 2021.**

  
EDGAR D. ROSS  
**Special Master**

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**ORDER AND JUDGMENT**

In accordance with the Memorandum Opinion entered contemporaneously herewith, it is hereby:

**ORDERED, ADJUDGED, AND DECREED** that the memorandum opinion as to Yusuf Claim Nos. Y-2 and Y-4, entered on May 5, 2021, is **VACATED IN PART** to the extent inconsistent with the Memorandum Opinion entered contemporaneously herewith. It is further:

**ORDERED, ADJUDGED, AND DECREED** that the following paragraphs of the order and judgment as to Yusuf Claim Nos. Y-2 and Y-4, entered on May 5, 2021, shall be **VACATED**:

**ORDERED, ADJUDGED, AND DECREED** Yusuf Claim No. Y-2 against the Partnership for past rent due to United for Bay 5 and Bay 8 of the United Shopping Plaza in the amount of \$647,851.57 is **GRANTED**. It is further:

**ORDERED, ADJUDGED, AND DECREED** that United shall recover from the Partnership the sum of \$647,851.57 on Yusuf Claim No. Y-2.

It is further:

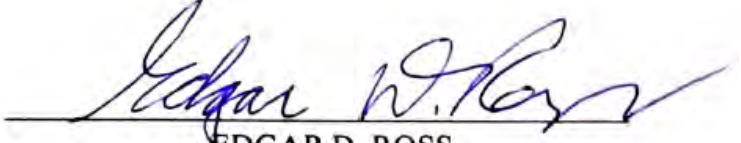
**ORDERED, ADJUDGED, AND DECREED** that Yusuf Claim No. Y-2 against the Partnership for past rent due to United for Bay 5 and Bay 8 of the United Shopping Plaza in the amount of \$496,914.07, is **GRANTED**. It is further:

**ORDERED, ADJUDGED, AND DECREED** that United shall recover from the Partnership the sum of \$496,914.07 on Yusuf Claim No. Y-2. **And** it is further:

**ORDERED** that, **within fourteen (14) days from the date of entry of this Order**, United **MAY** supplement its motion for reconsideration, filed on May 25, 2021, in the event that United wishes to extend his motion for reconsideration to the Master's determination of a reasonable rent for Bay 8. If United chooses to file a supplemental brief, United shall only include supplementation necessitated by the Master's instant Order and Judgment and the Memorandum Opinion entered

contemporaneously herewith. Failure for United to file within the deadline set forth in this Order and Judgment may result in the denial of any supplemental brief to United's motion for reconsideration United files after the deadline. If United files a supplement, then Hamed **MAY** file a response to United's supplemental **within fourteen (14) days from the date United's supplement is filed**. The Master will **RESERVE** ruling on United's motion for reconsideration.

**DONE and so ORDERED this 7th day of June, 2021.**

  
EDGAR D. ROSS  
**Special Master**