

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/Counterclaimants.

vs.

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

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

FATHI YUSUF, *Plaintiff,*

vs.

ESTATE OF MOHAMMAD A. HAMED,

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

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-18-CV-219

Consolidated with

Case No.: ST-17-CV-384

**HAMED'S PROPOSED FINDINGS AND CONCLUSIONS RE CLAIM H-142
THE HALF-ACRE ACCESS PARCEL AT TUTU**

TABLE OF CONTENTS

Introduction

I. Proposed Findings of Fact

A. The Property and its Acquisition	4
B. March 2011 Meeting at Hamed’s House	6
C. 2011 Jordan Trip.....	9
D. Late Summer to Christmas 2011 “Conversations”	10
E. How the Parcel was “Treated” After 2011.....	16

II. Proposed Conclusions of Law

A. Lack of “Meeting of the Minds”	18
B. RUPA Section 204(c) Controls Such an Alleged Transfer.....	19
C. Recission or Superseding by Yusuf’s Additional Demands.....	24
D. No Consideration and No Transfer.....	25

III. Conclusion

Attachments:

Exhibit A - Excerpt from Yusuf Claims filing

Exhibit B - RUPA §204(c) with Official Comments

Note: The numbered exhibits from the hearing are not attached here. Rather, they are being provided with the two paper copies of all of the documents served on the Special Master.

LIST OF EXHIBITS

Plaintiff's	
Pl.Ex. A	Excerpt from Yusuf Claims filing
Pl.Ex. B	RUPA §204(c) with Official Comments
Pl.Ex 1	Aerial photo of East – Charlotte Amalie
Pl.Ex 2	Aerial photo of properties: 0.536 Acres and 9.438 Acres
Pl.Ex 3	Act No. 6914
Pl.Ex 4	Written Declaration and Undertaking for property in Jordan
Pl.Ex 5	Balance Sheet - Plaza Extra, STT December 31, 2012
Pl.Ex 6	Balance Sheet - STX Shopping Center December 31, 2012
Pl.Ex 7	Affidavit of Mohammad Hannun, April 21, 2014
Pl.Ex 8	Excerpt of Deposition of Negeh Yusuf
Pl.Ex 9	Fathi Yusuf's Answers to Waleed Hamed's First Set of Interrogatories, November 20, 2013
Defendant's	
Def.Ex. 6	Excerpt of Deposition of Waleed Hamed
Def.Ex. 3	Excerpt of Deposition of Fathi Yusuf
Def.Ex. 2	Fathi Yusuf's Answers to Waleed Hamed's First Set of Interrogatories, November 20, 2013
Def.Ex. 17	Affidavit of Suleiman Khaled, May 31, 2014
Def.Ex. 18	Affidavit of Bakir Hussein, August 10, 2014

Introduction

Hamed's Claim H-142 concerns a 0.536 acre parcel ("Subject Parcel") near the Tutu Park Mall.¹ It is uncontested that the Partnership paid the purchase price of \$300,000 for the Subject Parcel, and owned the parcel in 2008. Yusuf and United paid nothing.

It is also uncontested that Plessen Enterprises, Inc. ("Plessen") purchased and holds title to the adjacent 9.438 parcel. It is uncontested that the Subject Parcel was purchased by the Partnership to provide "access" to Plessen's adjacent 9.438 acres and thereafter it was always thought of by the Partners as being part of the development of the 9.438 acre parcel.²

Here, Yusuf seeks a determination that the Partnership transferred the 0.536 acre Subject Parcel to him personally in 2011. Hamed seeks the contrary finding—that this Partnership asset purchased in 2008 was never transferred to Fathi Yusuf in 2011. Thus, it is still a Partnership asset.

Summary of Argument

Hamed respectfully submits that the evidence shows that while Hamed agreed at various times to transfer two parcels owned by the Partnership to Yusuf, at no time was there ever a complete meeting of the minds because: (1) Hamed always made these concessions in order to "buy peace" by resolving *all* allegations of misfeasance, whether known or unknown, while (2) Yusuf always wanted his proposed release to include only what was known at that time, as he wanted to keep looking for additional claims to assert.

¹ Parcel 2-4 Rem., Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, USVI.

² As set forth in his claim, Hamed seeks judgment that the parcel "belongs to the Partnership." If Hamed prevails, ownership will be in the Partnership, and owned by the Hameds and Yusufs 50/50. If Yusuf wrests this access parcel from the Partnership, he can bar the planned access to Plessen's larger parcel, contrary to the intent of the both the partners and the Virgin Islands Legislature, which rejected rezoning for Plessen's project and only reversed itself when this parcel was purchased solely for the required access to the main highway.

I. Hamed's Proposed Findings of Fact

Hamed submits his proposed findings of fact as adduced at the hearing regarding five specific points:

- a. General Factual Background of the Property and its Acquisition
- b. Facts Related to a March 2011 Meeting at Hamed's House
- c. Facts Related to a 2011 Jordan Trip
- d. Facts Related to the Late Summer to Christmas 2011 "Conversations"
- e. Facts Related to the Parcel Being "Treated" as a Partnership Asset After 2011

A. General Factual Background of the Property and its Acquisition

1. It is uncontested, as both Wally Hamed and Fathi Yusuf testified, that the USVI GIS photosurveys introduced as **PI. Ex. 1** and **PI. Ex. 2**, are annotated enlargements from the official USVI online database, which show the location of the 0.536 acre Subject Parcel in relation to a 9.438 acre main parcel as well as proximity to the main highway.
2. It is uncontested, as both Wally Hamed and Fathi Yusuf testified, that Plessen purchased and is the owner of the 9.438 acre "main" parcel adjacent to the 0.536 acre Subject Parcel. W.Hamed at 16-18; F.Yusuf at 105-106.
3. It is uncontested, as both Wally Hamed and Fathi Yusuf testified, that when the 9.438 acre main parcel was purchased by Plessen Enterprises, Inc, its intended use was to build a new supermarket on this jointly owned site. W.Hamed at 20; F.Yusuf at 84.
4. It is uncontested, as both Wally Hamed and Fathi Yusuf testified, that Plessen Enterprises, Inc. is a corporation, the stock of which is equally owned by both (a) various

members of the Yusuf family whose shares total 50%, and (b) various members of the Hamed family whose shares also total 50%. W.Hamed at 17-18; F.Yusuf at 106.³

5. The caption of this action correctly reflects that neither Plessen nor all of its shareholders are parties to this litigation. *Infra* at 1.

6. It is uncontested, as both Hamed and Yusuf testified, that Plessen made an initial application for a commercial use zoning change to the Senate to build the new Tutu Plaza Extra Supermarket on the 9.438 acre main parcel—which application was denied due to a lack of access to the main highway. W.Hamed at 16-17, 46; F.Yusuf at 84 and 108.

7. It is uncontested, as both Hamed and Yusuf testified, that the Senate required a new entrance to the 9.438 acre main parcel for access to the main highway if it was to be re-zoned for a supermarket project. *Id.*

8. It is uncontested, as both Hamed and Yusuf testified, that the subject parcel was purchased to provide the access the legislature required, and was thus thought of as being one property with the main parcel for the purpose of this development. *Id.* (Yusuf at 108 states, “All I know is we have half acre for entrance purposes.”)

9. On May 3, 2020, the Special Master entered an Order in which he stated the following as a matter of fact and law based on the two checks from the Partnership accounts which were used for the purchase (at pp. 5-6). The following bolded facts are true as a matter of judicial notice of that order:

On January 14, 2020, the Master entered an order (“Partial Summary Judgment Order”) whereby the Master, inter alia, denied Hamed’s motion for partial summary judgment for Hamed Claim No. H-142 and granted summary judgment regarding the narrow issue that the Partnership’s United held title to the Half Acre in Estate Tutu from 2008 to 2011. (Partial Summary Judgment Order)

³ References to “F.Yusuf” and “W.Hamed” refer to the transcript of testimony at the hearing on September 28, 2021.

The Master explained: Here, based on the record before the Master, it is undisputed that: (1) **partnership funds in the total amount of \$330,000 were used to purchase the Half Acre in Estate Tutu.** . . .In their opposition, United and Yusuf conceded that the Partnership's United held title of the Half Acre in Estate Tutu from 2008 until 2011. . . .in light of United and Yusuf's concession, the Master will grant summary judgment regarding the narrow issue that the **Partnership's United held title to the Half Acre in Estate Tutu from 2008 to 2011.** (Emphasis added.)

10. It is uncontested, as both Hamed and Yusuf testified, the Partners paid \$300,000 to purchase the subject parcel and then represented to the Senate that it would be used as the required access parcel to Plessen's revised, re-submitted development plan. Thereupon, based on the representation that the access parcel was included in the development plan, Plessen's commercial use zoning application was approved by Senate Act 6914. **PI. Ex. 3,** W.Hamed at 16-17, 46; F.Yusuf at 84 and 108.

B. Facts Related to a March 2011 Meeting at Hamed's House

11. On May 3, 2020, the Special Master entered an Order (pp. 23-24) in which he stated the following as a matter of fact and law. The following bolded facts are true as a matter of judicial notice of that order:

Based on the record before the Master, the Master finds that: (i) it is undisputed that Hamed, Yusuf, and Waleed Hamed, at some time in 2010 or 2011, met to discuss Yusuf's discovery of Hamed's misappropriation of funds; and (ii) it is undisputed, per Yusuf's admission and corroborated by Hamed, that while **Yusuf originally asked for two properties—with one of the two properties being a property located in Jordan** (hereinafter "Jordan Property")—to resolve the issue of Hamed's misappropriation of funds, **he ultimately agreed to one property—the Jordan Property—because he believed Hamed "was being straight with him."** (Hereinafter referred to as the "Original Agreement"). (Emphasis added, footnote omitted.)

12. In that same order (pp. 26-29), the Master noted that it was factually unclear, and strongly disputed by the parties, whether that Original Agreement was for Yusuf's release of: [1] misappropriations **known at the time**, or [2] the issue of all misappropriations, **whether known or unknown:**

(ii) As to the Original Agreement, whether it resolved the issue of Hamed's misappropriation **known at the time or the issue of all of Hamed's misappropriation, whether known or unknown.** According to Yusuf's testimony at his January 22, 2020 deposition, Yusuf's Amended Accounting Claims, Yusuf's Interrogatory Answers in Case 733, and Yusuf's testimony at his April 2, 2014 deposition, **it seems like the Original Agreement was to resolve the issue of Hamed's misappropriation known at the time.** However, **according to Waleed Hamed's testimony at his January 22, 2020 deposition, it seems like the Original Agreement was to resolve the issue of all of Hamed's misappropriation, whether known or unknown.** (Emphasis added, footnotes omitted).

13. In that same order (p. 29-30), the Master found as a matter of law and fact:

Based on the record before the Master, the Master finds that it is undisputed, per Yusuf's admission and corroborated by Hamed, that **Yusuf subsequently rescinded the Original Agreement.** (Emphasis added, footnote omitted.)

14. It is uncontested, as both Hamed and Yusuf testified, that Fathi Yusuf and Mohammad Hamed were the sole negotiators on the matters in the Original Agreement. W.Hamed at 28; F. Yusuf at 113.

15. It is uncontested, as both Hamed and Yusuf testified, that Fathi Yusuf never met with Mohammad Hamed again to discuss the Original Agreement, any additional agreement, or any additional properties. W.Hamed at 28; F.Yusuf at 113.

16. It is uncontested, as both Hamed and Yusuf testified, that Yusuf spoke to Wally Hamed immediately after Yusuf's rescission of the Original Agreement and Yusuf said that he was rescinding the agreement and now wanted "two parcels."

17. It is uncontested, as both Hamed and Yusuf testified, that when Yusuf subsequently asked Wally Hamed to convey a new offer for two parcels to Mohammad Hamed (W.Hamed at 56; F.Yusuf at 86-88) **there was no discussion or clarification of what the Yusuf release would be for in this second agreement—"known" or "known and unknown" allegations.**

It is important to examine exactly what Mr. Yusuf testified was said at pages 86-88:

Q: [Perrell at p. 86, line 5] You went back to the store, you found some documents that seems contradictory to what you knew. Is that fair?

A. Yes. Unfortunately, I find that Mr. Mohammad is still lying to me.

Q. Okay. What did you do about it? What was the next thing?

A. I immediately look for Wally and tell him, Wally, this, your father lied to me on this.

Tell him I will take the two property.

Q. Okay. And when you said the two properties, what did you mean?

A. The same two properties in St. Thomas.

Q. Okay.

A. That is already, you know, is the two property, the one in St. Thomas and the one in Jordan.

Q. Okay. **And did you tell him to do anything?**

A. **I tell him make sure you tell your father that's what I want.**

Q. Okay.

A. **I change my mind** because the man—your father was not truthful to me. (Emphasis added).

18. However, although Wally Hamed conveyed the new demand for two parcels⁴ to Yusuf, his father only stated “OK.” (Wally Hamed says he said his father said “ok” while Yusuf says Wally told him his father said “yes”.) In his testimony Wally Hamed made it clear that the entire point of this discussion was to buy peace as to what they saw as false allegations; both he and his father understood that any agreement for the two parcels covered everything Yusuf might allege had been misappropriated, whether known or unknown—that Wally was surprised when Yusuf asked for another, third, property after his father returned from Jordan, stating (W. Hamed at 29):

Q. Did there come a time that you entered into new discussions with Mr. Yusuf?

A. Yes. When my dad came back, my dad was sick, and from there on I took over the negotiations or the dealings with Fathi Yusuf because he continued accusing us of more things and more things and more things.

I remember having a meeting with Fathi, Fathi called me over and said, Hey, I found 1.5 and I want a piece of property. **I said, I thought we had a deal. I thought this was done.** He said, Well, I'll finish if you give me **more** property. I said, Well then, I'll get back to you. (Emphasis added)

⁴ As to exactly which two parcels were being offered, the record remains unclear. See footnote 7 below.

19. Thus, the foregoing testimony confirms that whatever the discussions were between Wally Hamed and Fathi Yusuf after the first March 2011 Original Agreement was rescinded, they still did not make clear what release would be provided, as Yusuf continued to understand he could still seek more properties, while Mohammad Hamed continued to understand that he was buying peace—that all such allegations were being settled, both known or unknown. In short, the follow up conversations between Wally and Fathi failed to include clarification of the key issue—whether (a) this was an agreement for those allegations “known at the time” or (b) this was an agreement for a final agreement for all such allegations “whether known or unknown.”

C. Facts Related to a 2011 Jordan Trip

20. In June/July 2011, both Mohammad and Fathi traveled to Jordan, but Fathi Yusuf testified that did not meet Mohammad Hamed there (or anywhere else after the March 2011, meeting on St. Croix). F.Yusuf at 113; W.Hamed at 27-28.

21. On May 3, 2020, the Special Master entered an Order (p. 41) in which he acknowledged the fact that Yusuf did not meet with Hamed during this trip to Jordan:

Yusuf testified at his January 22, 2020 deposition that he did not discuss the property at Estate Tutu with Hamed while they were in Jordan.

22. Yusuf had his lawyers draft a writing that effectuated what had originally been agreed to at Mohammad’s house—a writing involving only a parcel in Jordan—and did not include or even *mention* either any wider deal or any second parcel at Tutu (hereinafter referred to as the “Written Agreement.”) **PI. Ex. 4**, W. Hamed at 27.⁵

⁵ In describing what the parties agreed to in his Claims filing of September 30, 2016, Yusuf refers to this as an “agreement” involving Hamed’s transfer land in return for Yusuf’s release of claims of misappropriation (At pp. 13-14). (“A copy of the **agreement** in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O.”)

23. That Written Agreement recites both Yusuf's consideration (receipt of Hamed's shares in the one parcel in Jordan) and Hamed's ("*I received the price of my share in the mentioned land from Mr. Fathi Yusuf Mohamad Yusuf*") *Id.* Pl. Ex 4.⁶

24. On its face, that Written Agreement contains no reference either (1) to any broader contract implicating other parcels, or (2) to any land in Tutu. *Id.*, Pl. Ex 4.

25. That Written Agreement was signed on July 8, 2011. *See Agreement, supra.*, W.Hamed at 27 and Pl. Ex 4.

26. It is also a matter of the undisputed factual record that except for that Written Agreement there are no subsequent writings, financial records or correspondence which ever even mention either a broader deal or any second agreement as to Tutu parcels.

D. Facts Related to the Late Summer 2011 to Christmas 2011 "Conversations"

27. It is undisputed that after the summer Jordan trip, Mohammad became too sick with cancer to continue discussions with Fathi. W.Hamed at 29.

28. It is undisputed that as a result, Wally Hamed then (and only then) took over the discussions regarding the exchange of parcels for a Yusuf release. W.Hamed at 27-30.

29. It is undisputed that there were a series of discussions seeking a settlement that involved community elders (such as Mohammad Hannun), and well as Fathi Yusuf and Wally Hamed. W.Hamed at 29-33.

⁶ The U.S. Supreme Court held in *Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52, 62-63, 115 S. Ct. 1212, 1219 (1995):

Moreover, respondents cannot overcome **the common-law rule of contract interpretation that a court should construe ambiguous language against the interest of the party that drafted it.** [Citations omitted.] Respondents drafted an ambiguous document, and they cannot now claim the benefit of the doubt. The reason for this rule is to protect the party who did not choose the language from an unintended or unfair result. (Emphasis added.)

30. It is undisputed that the only non-party testimony as to the additional offers and counter-offers as to the parcels at issue comes from affidavits collected and notarized by Yusuf's counsel in 2014. Although these affidavits were originally withheld from Hamed until an order compelling disclosure was entered, these affidavits were admitted into evidence here by stipulation—but only one (Hannun's) was the subject of testimony at the hearing.

31. Mr. Hannun is equally related to both the Hamed's and Yusufs, being the brother of both Fathi's wife and Mohammad's wife. W.Hamed at 66-67. Although he was brother-in-law to both men, it was Yusuf who sought his testimony and obtained his affidavit.

32. In the affidavit of Mr. Hannun, he stated under oath as follows (**PI. Ex 7, ¶¶19-22**):

- He was present at the meeting in which Wally Hamed agreed to a two parcel deal.
- Wally finally did agree to exchange **two** parcels--the one already transferred in Jordan, and "Tutu" land.
- **Mr. Hannun heard, understood and later stated to Fathi Yusuf that the parties had agreed that in return for the two parcels the Hameds would get a release of all claims known and unknown.**
- After Hamed and Yusuf had so agreed, and the meeting was over and everyone went home, Yusuf called Hannun that night.
- Mr. Hannun told Yusuf that he heard and understood that "the agreement [for two parcels] covers everything, **even what he doesn't know about right now**"

(W.Hamed at 27-30 and Hannun Affidavit PI. Ex. 7), stating:

before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and I said no **the agreement covers everything, even what he doesn't know about right now.** (Emphasis added.)

- Mr. Yusuf told Hannun that he was (again) rescinding the agreement for two parcels, as he would not settle unless the deal was restricted to only what he knew then:

[¶19]. . . and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. Then there was no more agreement.

33. Two additional affidavits were admitted, but neither was the subject of any testimony at the hearing. Critically, the statements in those affidavits both stop at the time the meeting adjourned. **Def. Ex. 17 and 18**. Thus, neither speaks to the post-meeting discussions between Hannun and Yusuf or Hannun and Wally Hamed.

34. Testifying regarding that same meeting, Mr. Yusuf stated that there was a deal for two parcels that day. F.Yusuf at 93.

Q: [Perrell, line 13] Okay. And who was present at those meetings?

A. [Yusuf] Wally, myself, Suleiman Khaled, Mohammad Hannun and Bakir Hussein, five of us. I miss somebody. And Mr. Khalid Ali, he passed away.

Q. Okay. And **with regard to settlement of the two properties**, the Jordan property and the Tutu property, did Wally agree that those needed to be transferred?

A. Yes, he definitely agreed in front of the family. (Emphasis added.)

35. But Yusuf then contended, contrary to what Mr. Hannun understood, that his agreement to take two parcels at that time was intended by him to be in return for a release ONLY for what was known to him. [F.Yusuf at 117-118]

Q. So, Mr. Hannun says [Holt reading ¶19 of Hannun's Affidavit, Pl. Ex. 7]:

Later that night, before 24 hours past, Mr. Yusuf called and asked, If I find anything else, can he ask for it, and **I said no the agreement covers everything, even what he doesn't know about right now**, and Mr. Yusuf said no, that the agreement was for what he knew now, and not for everything else he finds. Then there was no more agreement.

Is that what happened? . . .

A. I don't know who told you that. I never say that. **I just want to confirm I am going to continue search.** (Emphasis added).

36. Both Hamed's and Hannun's statements make it clear that this was not what Wally Hamed thought he had agreed to, as they both testified that he had agreed to transfer the two parcels in exchange for a release of all claims, known or unknown (W. Hamed at 29-31):

Q. And did there come a time that there was finally a meeting with Mr. Yusuf where a second piece of property was discussed in the meeting?

A. That was down the road, maybe two months, a meeting we had—I had with him between August and September. We had another meeting that—he would go around the community and he would continue accusing us and building up this persona that we stole, we stole, we stole. The elders came in and called me one day, I'm not too sure what location it was, sat down, and after a few hours, they said, Look, your father had a deal, you gave him the option, go ahead and give him the piece of property. You have—told us to finish with this guy because he's not going to finish with you, he's going to continue doing this. After several hours, I said, Okay, no problem, I will honor what my dad did.

Q. So you, at that point, agreed to transfer the second piece?

A. Yes. We had an agreement, we shook hands, everybody was happy, everybody was ecstatic that **we were going to be finished with this guy.**

Q. And was that the end of the matter?

A. No, it wasn't, because the following day Fathi Yusuf said, There's no deal.

Q. And why did he say that?

A. **Well, he said, If I find other things, I have to go back, and if I find anything else, there's no deal, the deal is over with. And I believe from Mr. Hannun—Mr. Hannun is actually the one who called me the following day and said there's no deal, that Fathi called him last night and told him there's no deal if I find this and that, so, there's no deal.** (Emphasis added).

37. Thus, the only testimony on the critical post-meeting discussions between Hannun and Yusuf, then Hannun and Hamed comes from just three individuals, all of whom clearly confirm that while they all thought there was an agreement as to two parcels, but Mr. Yusuf then rescinded the deal that had been reached:

- Wally Hamed, who says there was a new two parcel deal for the release of all claims, known and unknown;
- Mr. Hannun who (in an affidavit obtained, notarized and previously proffered as evidence to the Master by Yusuf's counsel) states it was a two parcel deal for all claims known or unknown; and
- Mr. Yusuf—who asserts that he would not perform on the new two parcel deal because he demanded to be allowed to continue to search regardless of what had been agreed to that day.

38. As to evidentiary matters in a RUPA proceeding of this sort, in determining the facts related to that meeting, the accuracy of those statements must be considered by the Master with the *inference* that the Subject Parcel remained partnership property, and in the absence of any way to determine which testimony is most accurate, the Master must apply the *presumption* that it remained Partnership property.

39. All three men testified that negotiations over “two versus three parcels” and “claims just known versus those known and unknown” did not stop after Yusuf rescinded the deal that the elders tried to broker, as they all testified as to subsequent such negotiations just prior to Christmas—in which Yusuf again offered a settlement of all claims, known or unknown in return for three parcels, but that Hamed refused to do so. (W.Hamed, 31-32):

Q. Okay. So, there were more meetings and then more discussions about property?

A. Yes. There was a meeting around Christmas, and we never made a deal.

Q. So was there ever an agreement to transfer a second parcel to Mr. Yusuf?

A. No.

39. Wally Hamed then explained why he could not proceed further (W. Hamed, 32-33):

Q. And why wouldn't you transfer the second parcel to Mr. Yusuf?

A. Because it was a never ending story. We had a deal. We had a deal in March, we had—he shook hands with my dad, everything was done, and then this guy turns around and no deal. He didn't fulfill the deal. . . .

Q. So in December of 2011 when you had the additional negotiations and no agreement was reached, was that the end of the discussions?

A. That was basically the end.

Q. And ultimately the parties ended up in litigation on these issues?

A. Yes

40. At the hearing, Yusuf acknowledged that he continued to seek more property after the first meeting with the elders (F.Yusuf at 94):

Q: [Perrell] Okay. So just to be clear, the **third Jordan property** would have been a global settlement, correct?

A. . . .he said if I [Yusuf] give him [Hamed] this, he [Yusuf] going to keep asking for property. I [Yusuf] say, I guarantee you, **I will never look anymore.**⁷ (Emphasis added.)

41. At the hearing, Yusuf acknowledged that by this point the Hameds no longer thought his demands more property would ever end. Yusuf at 90.

42. Fathi Yusuf's interrogatory answers were admitted into evidence (Pl. Ex 9.), stated:

18. Do you dispute that a meeting was held in or around December 2011 in order to try and resolve the disputes between the parties, if not, who was present, the date of the meeting, the substance of what was discussed, whether an investigation was undertaken, by whom the scope of the investigation and the results and whether an agreement was put in writing to be finalized by Attorneys and the terms and conditions of that agreement.

RESPONSE No. 18: [Yusuf] objects to the form of the question. . .
Notwithstanding the above objection, [Yusuf] **believes that this**

⁷ At the hearing Yusuf testified that the term "third parcel" refers to an additional parcel in Jordan. F.Yusuf at 89-90:

Q. [Perrell] Hang on. What was the third property in Jordan?

A. [Yusuf] The third property in Jordan I bought for \$3 million. I have an offer to sell it for \$42 million and I turn it down.

Hamed agrees that while the parcels were thought of together for the purpose of the development, it is not true that the 9.435 acre parcels or a limit of the release to just "known claims were included in that Original Agreement discussion. These were both added by Yusuf in later discussions. The only actual, written evidence as to this fact can be reviewed in Yusuf's original Claims Filing (Exhibit A at 13-14), Yusuf asserted that the original deal was for the parcel in Jordan and **the half-acre parcel in Tutu**. Contrary to his testimony at the hearing, he originally referred to the 9.3 acre main parcel (owned by Plessen) as the "third" parcel he sought in return for an additional release of "all allegations known or unknown." Yusuf stated in his Claim:

Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N [the Written Agreement], and **one half acre parcel in St. Thomas**. . . .Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, **Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre** parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Interrogatory is referring to a meeting that was held on the day before Christmas. For Attendees see Defendant's Response to No. 16. *No agreement was reached. No agreement was drafted as a result of this meeting to [Yusuf's] knowledge.* (Emphasis added.)

43. Hannun testified by affidavit that Pl. Ex 7, ¶21:

Finally, at one the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows and he would not do any more searching for monies he did not know about. (Emphasis added).

43. As such, no agreement was ever finalized for the second parcel of property (the half acre Tutu parcel) to be transferred to Yusuf, as Yusuf always wanted one more piece of property while the Hameds were only willing to agree to convey parcels if it would have resolved all claims, whether known or unknown between the Partners.

E. Facts Related to How the Parcel was "Treated" After 2011

44. There are absolutely no post-2011 actions by either partner or by United that even suggest they intended or believed the partners had actually agreed to transfer the half acre parcel, nor is there any evidence in the partnership accounting records that suggests that the Partnership did not continue to own it after 2011. These later actions dealing with the property are as follows:

- Pl. Ex 5 shows the property being carried on the books of the Partnership as Partnership property **after** the alleged 2011 oral contract, with the Partners were still jointly paying all of the taxes and other costs.
- Similarly, Pl. Ex 6 shows that Yusuf did not put this asset on his own shopping center books in 2012-2014, well after the 2011 alleged oral contract.
- Wally Hamed testified that he was familiar with the Partnership accounting records and all taxes for the half acre parcel were paid by the Partnership through at least 2014. W. Hamed at 37-38.
- All of the rents from the half acre Tutu parcel continued to be deposited by Nejeah Yusuf into the Partnership's account after 2011. **Pl. Ex 8** (Deposition of Najeh Yusuf).

Q. Okay. And did you ever—any of the—the money that came in for rent, did it ever go through your hands or did it always go through the desk?

A. They always called me. I handled it with the folks. I wrote them a **receipt from the store**. And I had it deposited in the accounts up until my dad told me stop depositing those funds in the—in the **store's account**.

Q. And when did he tell you that?

A. Towards the end of the partnership. (Emphasis added.)

46. The continued treatment of this half acre Tutu parcel as partnership property after 2011 is particularly significant since it was after Yusuf had given his notice of the partnership dissolution, so that he could no longer assert that the Hameds had waived any objection to his lax handling of the partnership accounting, as noted in the Special Master's October 21, 2020, Opinion (on p. 29), which stated:

As soon as Yusuf or Hamed advised the other partner of his intent to dissolve the Partnership, the relationship became adversarial, which in effect terminated Yusuf's absolute control over the Partnership finances, terminated Yusuf's total authorities over the Partnership and United, and terminated the treatment of the dealings between the Partnership and United as one unit. Once the relationship between the partners became adversarial, Hamed and the Partnership are no longer estopped . . . for actions taken by Yusuf thereafter . . . (Emphasis added).

47. In fact, Yusuf has not submitted any evidence, testimonial or in exhibits, that either he or United has ever treated the half-acre parcel as his own property. Against all of these factors demonstrating the intent and treatment as Partnership property, there is not a scintilla of evidence from United or Yusuf in this regard.

II. Proposed Conclusions of Law

A. Conclusions of Law as to a Lack of “Meeting of the Minds”

1. Both Judge Brady and the Master have held that as a matter of law, this is a RUPA Partnership—the Partners being Mohammad Hamed and Fathi Yusuf.
2. The Master has previously held that the Subject Parcel (the half-acre parcel) was purchased solely with Partnership funds; and that, as a matter of law under RUPA, it was the property of that RUPA Partnership in 2008.
3. Plessen is not a Partner, does not have all shareholders in common with the Partnership, is not a party here, and purchased the main 9.3 acre parcel with its own funds—and thus its rights cannot be affected here.
4. Yusuf originally argued that this half-acre parcel was transferred to him orally in 2011 by Hamed at a meeting at Hamed’s house in March of 2011—that Hamed agreed to cause the Partnership to carry out such a transfer to Yusuf personally. However, the Master has previously held as a matter of fact and law that Yusuf rescinded that Original Agreement.
5. Yusuf contends in the alternative that that even if he did rescind the Original Agreement, there was a second, subsequent agreement entered into because of communications conveyed to and from Mohammad Hamed by Wally Hamed.
6. Hamed maintains that (1) the terms of the Original Agreement were not clear as to whether it was for “known” versus “known or unknown” claims (as previously discussed by the Court [SOF 12]), so that the alleged second agreement for two rather than one parcel was similarly fatally flawed, and that, in any case, (2) Yusuf rescinded that second agreement with a number of subsequent, changing demands as to what was or was not supposed to be in the release, offers and counteroffers—one of which (3) was accepted by Hamed, with Hannun present; clarifying or superseding any prior discussions or agreements.

7. A party asserting any contract has the burden to show there was a meeting of the minds. As a matter of law, Yusuf has this burden as to any alleged oral contract that would stop this from being Partnership property. *Cornelius v. Bank of Nova Scotia*, No. 2015-0058, 2017 V.I. Supreme LEXIS 50, at *21 (Aug. 8, 2017)(“a contract is only formed or modified to the extent there is mutual assent and mutual consideration,”) see also *Williams v. UVI*, 2019 V.I. LEXIS 2, at *5-6 (Super. Ct. Jan. 18, 2019)(emphasis added)

A manifestation of mutual assent or a meeting of the minds requires that the two parties that intend to form a contract **are in agreement to the same terms and must be proven objectively**. . . Here, this court finds that Defendant is correct that there was no express contract created between the parties. The language of the 1997 memo does not expressly offer a promise of merit pay to Plaintiffs, **there was no clear acceptance by Plaintiffs** as Plaintiffs were conditioned on their employment agreement to continue working for Defendant, thus the continued benefit given to Defendant by Plaintiffs does not signal separate adequate consideration to this court. **Also, without an offer presented by Defendant and an acceptance by Plaintiffs, this court cannot deduce that there was a manifestation of mutual assent between both sides or a “meeting of the minds.”** Therefore, absent clear evidence of all requirements of an enforceable contract, this court holds that no enforceable express contract existed between Plaintiffs and Defendant.

8. As set forth in the following section concerning the application of RUPA to attempts to obtain property purchased with partnership funds, this issue must be viewed in light of the inference that there was not a transfer of Partnership property and the presumption that this remains Partnership property as to these facts relating to a meeting of the minds.

9. Yusuf has failed to meet this burden of proof, as the evidence is insufficient to support a finding that there was a sufficient meeting of the minds between Yusuf and Hamed as to whether the release would be for “known” allegations or “those known and unknown” to overcome the inference and presumption.

B. Conclusions of Law as to RUPA Section 204(c) Controlling a Transfer

10. Because the parties agree that there was no (1) written agreement that the Partnership would transfer the Subject Parcel, and (2) no written transfer of the property, under RUPA §204(c) the Special Master must analyze Yusuf’s assertion of a meeting of the minds regarding an oral transfer of partnership property under RUPA §204(c)—and the inference, presumption and burden it imposes,⁸

Revised Uniform Partnership Act (“RUPA”) §204(c)(“When Property Is Partnership Property”)⁹

* * * *

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners....

11. As noted in footnote 6 above, and codified into RUPA, a party who claims an alleged transfer despite clear knowledge that a RUPA partnership has not issued a deed and continues

⁸ As codified in the V.I. Code at 26 V.I.C. § 24(c), this case must be decided under RUPA, but even if non-RUPA USVI caselaw regarding ‘quieting title’ against a subsequent oral contract were applied, the factors would be almost identical to those mandated for determining the partners’ intent via “subsequent *treatment*” under RUPA. See *Andrews v. Nathaniel*, 42 V.I. 34, 38 (Terr. Ct. 2000); *cited* in 7 decisions; *followed on other grounds*, *Miller v. Sorenson*, 67 V.I. 861, 873 (V.I. Supreme Ct. 2017).

It is evident from Roberts' testimony that he only hypothesized that he had paid the full amount based on the length of time that he was making payments. Roberts kept **no records** of any of his payments and lost most of the receipts that Carl Andrews gave to him. Furthermore, Roberts has not adequately explained his **failure to obtain a deed** from Carl Andrews after he purportedly paid the full purchase price. Moreover, if Roberts had paid the full purchase price, then it is inexplicable that he allowed Rupertha Andrews to **collect \$800 [rent]** in \$100 installments from his tenants over a **three year period**. These inconsistencies are too significant to ignore. The Court concludes that based on the evidence presented at trial, Roberts has not paid the purchase price for the property and cannot be adjudged the owner on this ground. (Emphasis added.)

⁹ Hamed incorporates by reference his analysis of §204(c) of the 1997 RUPA from his PSJ motion. RUPA was adopted, *verbatim*, by the USVI, in 1998—as 26 V.I.C. § 24 (“When property is partnership property”) *accord.*, *Yusuf v. Hamed*, 59 V.I. 841 (2013) (“the [VI] Code incorporates the [UPA] of 1997...See 26 V.I.C. §§ 1-274.”)

to collect the rents and pay the taxes, is subject to the inference that he is not the owner. *Official Comment 4* to RUPA Section 204(c) (**Pl. Ex. B**),

The inference concerning the partners' intent from the use of partnership funds outweighs any inference from the State of the title, subject to the overriding reliance interest in the case of a purchaser *without notice of the partnership's interest*.

12. Mr. Yusuf clearly had notice of the Partnership's interest and the fact that a dispute could arise. Despite this known interest, he did not create a writing at the time when such a writing would have clarified this. He did create a writing as to the parcel in Jordan, and he did cause Plessen to create a writing as to the 9,453 acre main parcel. RUPA creates an inference against such an agreement, and places the presumptive burden on him to prove it. See *In re Estate of Bolinger*, 1998 MT 303, ¶ 80, 292 Mont. 97, 116.

13. Courts interpreting this RUPA provision hold that the Court should make the necessary determination as to "intent" from how the Partners "*treated*" the property after any alleged 2011 transfer.¹⁰ As stated in *White v. White*, 234 So. 3d 1210, 1214 (Miss. 2017):

The 1992 deed lists the grantees as Charles W. White and Charles T. White, as tenants in common [not the partnership]. At trial, the testimony revealed that all of these properties were treated as partnership property, that they were purchased with partnership funds, that the **property taxes were paid with partnership funds**, and that **the rent from the properties was collected by and paid to the partnership**.

In *Reed v. Thurman*, No. E2014-00769, 2015 Tenn.App.LEXIS 111, at *29-*30 (Ct.App. Mar. 10, 2015) the court was presented with a situation strikingly similar to the facts here. A RUPA partnership was held to exist—implied from a long, complex relationship. The disputed property was purchased with partnership funds well before the breakup. As the end neared, one partner initiated oral discussions to "settl[e] their rights with respect to" that property.

¹⁰ See e.g., *Finch v. Raymer*, 2013 Tenn. App. LEXIS 319, at *35 (Ct. App. May 6, 2013).

Although there was a writing as to some property, it did not mention the specific property at issue. That partner said a transfer had been agreed to orally and completed, the other disputed the agreement and transfer. Like this case, this was classic “he said, she said.” Because the property was purchased with partnership assets, RUPA §204(c) was applied. Applying that presumption, the “court awarded [the Partnership and the contesting partner] an interest in these assets upon determining that they were purchased out of the L&R Farm bank account....”

Moreover, although Randell argues that the January 2010 settlement agreement settled all property rights between him and Leisa, we find no error in the trial court's conclusion that it did not. Leisa testified that **the parties had discussed settling their rights with respect to the farm equipment**, and despite representations from Randell that he would pay her for her share, she testified that he never did. A review of the settlement agreement confirms that it does not address the parties' rights concerning farm equipment, and we accordingly find that the trial court did not err in awarding Leisa compensation for identified partnership assets.

Specifically, we affirm the trial court's determination that Leisa had an interest in the "Hay Rings," "Gates," "Post Hole Digger/Auger," "Sprayer," "Cattle Chute," "2-Three Ton Feeders," "6-Ton Feeder," and "4-Three Ton Feeders." The trial court **awarded Leisa an interest in these assets upon determining that they were purchased out of the L&R Farm bank account during the period of the implied partnership.** We agree with this conclusion of the trial court. As already noted, **property is presumed to be partnership property if purchased with partnership assets.** Tenn. Code Ann. § 61-1-**204(c)** (2013). (Emphasis added.)

Similarly, in *Hitt v. Lyle*, 2020 Ark. App. 124, ¶ 10, 596 S.W.3d 540, 547 (Ct. App. 2020)

To rebut the presumption, James emphasizes that the property was deeded solely to him. He testified that he purchased Sink Farm by himself and not as part of the partnership **despite the fact that payments for the farm were made with funds from the family bank account.** He asserts the family bank account was used because until 2005, it was the family's only bank account, and everyone used the partnership account for personal expenses. James also explained that the partnership account was used to make payments on the loan because he had leased the land to the partnership for farming and accepted payment on the loan in lieu of rent.

We are left with a definite and firm conviction that the evidence James submits does not sufficiently rebut the presumption that Sink Farm was partnership property.

14. The Special Master finds that the following facts create an inference against an oral contract as they reflect the treatment of the parcel by the partners after 2011: (1) the rents from

this parcel were deposited into the Partnership's account after 2011,¹¹ (2) no such rents were deposited into Yusuf's or United's accounts, (3) the property taxes were paid by the Partnership after 2011 (W. Hamed at p. 37-38), (4) no evidence has been adduced and there is no testimony that Yusuf or United ever paid any such taxes or other administrative amounts, (5) the parcel was carried on the Partnership's books which were filed with this Court in the Partner's reports as Partnership property after 2011 (P. Ex. 5), (6) the asset was not carried on the separate United books similarly submitted, after 2011 (P. Ex. 6),¹² (7) the Partnership never executed any document transferring the property after 2012, and (8) there is no evidence that the Partners caused Plessen to transfer the 9.438 acre parcel to United or Yusuf, (9) "the subject parcel was purchased to provide the access the legislature required, and was thus thought of as being one with the main parcel," (SOF ¶18) and (10) the parties represented to the Senate that the parcel would be joined with the Plessen main parcel, and the Senate relied on this to issue the zoning change.

15. In short, there were no contemporaneous Partnership records or any testimony that show any evidence that this half acre was ever transferred by the Partnership to Yusuf.

¹¹ As Nejeah Yusuf testified, it is undisputed that all of the rents for the businesses on that parcel were deposited into Partnership funds—directly into the d/b/a Plaza Extra store account. See January 22, 2019, deposition testimony of Nejeah Yusuf, at 38. PI. Ex 8. **This continued well after 2011**, at least until the litigation began, when Fathi ordered several financial records and practices changed to make things look better.

¹² Compare **PI. Ex 5**, the 2012 balance sheet for the Partnership *with* **PI. Ex 6**, the completely separate balance sheet for the Yusuf's-United version of United, which operated through the "Tenant" account—which is titled "*United Corporation - Balance Sheet - STX Shopping Center - December 31, 2012.*" That was after the alleged transfer and was compiled and filed far later than that. The Yusuf's-United balance sheet shows the real estate at Sion in the shopping center, but not the half-acre in Tutu. The Tutu parcel was carried in the St. Thomas section of the *Partnership books* as "Land - Est Char Ama - 330,000.00." Again, all of this was the treatment of the land long after 2011. No factor suggests otherwise.

16. To the contrary, the only contemporaneous documents were (1) the 2011 Written Agreement executed in Jordan that reflects the only written agreement between the Parties and transfers just one parcel in Jordan and (2) the representations by the Partners to the Senate that the Subject Parcel would be used with the main parcel.

17. It is well-established law, as discussed above, that in the absence of a writing, the issue of an alleged oral transfer of partnership property is controlled by RUPA. Intent is determined by contemporaneous statements and treatment of the property.

18. The only two contemporaneous statements that are endorsed by both parties are that “the subject parcel was purchased to provide the access the legislature required,” and “was thought of as being one with the main parcel.” (SOF ¶8.)

19. The other contemporaneous statements are disputed as to what was agreed to, however, the treatment of the property by the Partnership does not reveal any evidence of a transfer of the parcel to Yusuf in 2011, much less the intent to do so.

20. Thus, the Subject Parcel cannot be shown to the necessary level of proof to have been transferred to Yusuf.

C. Rescission or Superseding by Yusuf’s Additional Demands

21. Moreover, even if there had been clear evidence of a “meeting of the minds” between Fathi Yusuf and Wally Hamed, each such agreement was serially rescinded by Yusuf asserting that he could make additional demands for more property if he found further alleged misconduct. In this regard, Hannun’s affidavit makes it clear that in the late-summer 2011 “discussions,” Hamed may have agreed, superseding any prior agreements, but (Pl. Ex. 7):

before 24 hours past, Mr. Yusuf called and asked [Mr. Hannun], if I [Yusuf] find anything else, can he ask for it, and I [Hannun] said no **the agreement covers everything**, even what he doesn't know about right now, and **Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. Then there was no more agreement.**

22. That new agreement and recession was not the last negotiation. Yusuf's own interrogatory answers (P. Ex. 9) make it clear that the negotiations trying to distinguish two versus three parcels and known versus unknown releases never concluded and continued the day before Christmas in 2011. *See Answers to Plaintiff Waleed "Wally" Hamed's First Set of Interrogatories in Mohammad Hamed, et. al. v Fathi Yusuf, SX-2012-CV-377(Pl. Ex. 9):*

18. Do you dispute that a meeting was held in or around December 2011 in order to try and resolve the disputes between the parties, if not, who was present, the date of the meeting, the substance of what was discussed, whether an investigation was undertaken, by whom the scope of the investigation and the results and whether an agreement was put in writing to be finalized by Attorneys and the terms and conditions of that agreement.

RESPONSE No. 18: [Yusuf] objects to the form of the question. . . Notwithstanding the above objection, [Yusuf] believes that this Interrogatory is referring to a meeting that was held on the day before Christmas. For Attendees see Defendant's Response to No. 16. No agreement was reached. No agreement was drafted as a result of this meeting to [Yusuf's] knowledge. (Emphasis added.)

23. As Hannun confirmed (Pl. Ex. 7 at ¶ 21):

Finally, at one [sic] the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows and he would not do any more searching for monies he did not know about.

24. Wally Hamed's testimony also confirms that negotiations continued until Christmas as well, and that no agreement was ever reached. W. Hamed at p. 31-32.

25. Thus, as an alternative conclusion of law, the Special Master finds that on various occasions it is possible that a meeting of the minds may have been reached, superseding or clarifying prior agreements, but each time that happened, Yusuf rescinded by *later* asserting that he could still look for more claims and seek more property if he found any such claims.

D. Conclusions of Law as to No Consideration

26. With regard to the "two parcel" agreement Yusuf alleges was formed when Wally transmitted what his father said after the Original Agreement was rescinded (Wally Hamed

says he said his father said “ok” while Yusuf says Wally told him his father said “yes”), there was no alleged oral agreement between partners since there was no consensus on the key term—was this for all claims or just for the “then-known” claims.

27. Even if there had been an actual meeting of the minds creating an agreement, Yusuf has never provided the consideration – an actual release of all potential claims and cessation of litigation of the claims against the Hameds regarding the alleged taking of funds.

28. Thus, as an alternate conclusion of law, the Special Master finds that no consideration was ever given as promised, as Fathi Yusuf continued to look for additional claims, as well as continuing to pursue additional claims against the Hameds, some of which were later dismissed by Judge Brady’s “laches” Order barring claims after September 2006, and some of which are still pending, such as Yusuf’s “lifestyle claims.”

III. Conclusion

The issue in this case is whether there was ever an agreement to transfer the half acre parcel for a release of just the known allegations. The Special Master has already found that there was a lack of clarity and a dispute about this critical term in the Original Agreement. While there were subsequent discussions between Fathi Yusuf and Wally Hamed, it is clear that Hamed thought each discussion ended with a final resolution of all claims both known and unknown, while Yusuf believed he could continue to look through the Partnership records to see if he could find additional claims to assert. Thus, there is insufficient evidence upon which to find that the Parties ever had a meeting of the minds on the transfer of the half acre parcel.

Moreover, in the absence of a writing, RUPA requires the ambiguities to be resolved under the presumption that it was Partnership property and must remain so in the absence of a definitive showing to the contrary. In this regard, all of the factors as to subsequent treatment of the parcel by the parties reflects the fact that the half acre parcel was never transferred, as

the Partnership continued to collect the rents, pay the taxes and carry it as an asset on its books. Yusuf and United do not allege that they ever paid such taxes. They do not allege that they collected the rents. They do not allege that they carried the parcel as their asset. Thus, the Master should not determine facts here based on his view of what is more or less likely, as in a non-RUPA dispute, but rather, he must view the facts in light of the strong RUPA inference and presumption—unless there exists significant actual evidence (as opposed to self-interested statements and inferences as to what MIGHT have been meant or intended). In this case, there is insufficient actual hard evidence to support a finding that any final agreement was reached as to the transfer of the property under the RUPA standard.

Finally, even if there was a tentative agreement to transfer the properties after the March, 2011, meeting, Yusuf rescinded it each time by continuing to insist that he *Partnership*.could continue to search for more claims. There is no dispute, it was never transferred *by the*

Dated: October 29, 2021

/s/ Joel H. Holt

Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2021, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross (*w/ 2 paper copies to his Clerk*)
Special Master
edgarrossjudge@hotmail.com

Stefan Herpal
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
cperrell@dnfvi.com

/s/ Joel H. Holt

EXHIBIT A

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Additional Counterclaim Defendants.

MOHAMMAD HAMED,

Plaintiff,

v.

UNITED CORPORATION,

Defendant.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

**EXHIBIT
A**

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES
AND DECLARATORY RELIEF

YUSUF’S ACCOUNTING CLAIMS AND PROPOSED DISTRIBUTION PLAN

Pursuant to the “Final Wind Up Plan Of The Plaza Extra Partnership,” entered on January 9, 2015 (the “Plan”),¹ §9, Step 6, and the August 31, 2016 directive² of the Master, as clarified

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

¹ Unless otherwise defined, all capitalized terms have the same meaning as provided in the Plan.
² That directive required the Partners to submit any objection to the previously submitted Partnership Accounting and any claims against the Partnership or a Partner by September 30, 2016. It is undisputed that since the inception of the Partnership, the only Partners were Yusuf and Hamed, who died on June 16, 2016. On September 20, 2016, a Motion And Memorandum For Substitution Of Named Plaintiff was filed seeking an Order substituting Waleed M. Hamed, as Executor of the estate of Hamed, as Plaintiff.

- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,216; see **Exhibit M**.
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997; and
- e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as **Exhibit N**. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels.

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as **Exhibit O**¹⁶. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels,

¹⁶ Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt.

one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

VII. Loss of Going Concern Value of Plaza Extra-West

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

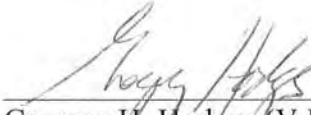
As equal Partners, both Hamed and Yusuf had ownership interests in the "going concern" value of Plaza Extra-West. A "going concern" value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the "going concern" value of a business represents the

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: September 30, 2016

By:


Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, I caused the foregoing **Yusuf's Accounting Claims and Proposed Distribution Plan** to be served upon the following via e-mail:


Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI-00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI-00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

EXHIBIT B

UNIFORM PARTNERSHIP ACT (1997)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIFTH YEAR
SAN ANTONIO, TEXAS
JULY 12 - JULY 19, 1996

WITH PREFATORY NOTE AND COMMENTS

COPYRIGHT© 1994, 1996, 1997

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Approved by the American Bar Association
San Antonio, Texas, February 4, 1997

appreciation mortgages, contingent or other variable or performance-related mortgages, and other equity participation arrangements by clarifying that contingent payments do not presumptively convert lending arrangements into partnerships.

4. Section 202(e) of the 1993 Act stated that partnerships formed under RUPA are general partnerships and that the partners are general partners. That section has been deleted as unnecessary. Limited partners are not “partners” within the meaning of RUPA, however.

SECTION 203. PARTNERSHIP PROPERTY. Property acquired by a partnership is property of the partnership and not of the partners individually.

Comment

All property acquired by a partnership, by transfer or otherwise, becomes partnership property and belongs to the partnership as an entity, rather than to the individual partners. This expresses the substantive result of UPA Sections 8(1) and 25.

Neither UPA Section 8(1) nor RUPA Section 203 provides any guidance concerning when property is “acquired by” the partnership. That problem is dealt with in Section 204.

UPA Sections 25(2)(c) and (e) also provide that partnership property is not subject to exemptions, allowances, or rights of a partner’s spouse, heirs, or next of kin. Those provisions have been omitted as unnecessary. No substantive change is intended. Those exemptions and rights inure to the property of the partners, and not to partnership property.

SECTION 204. WHEN PROPERTY IS PARTNERSHIP PROPERTY.

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners with an indication in the instrument

transferring title to the property of the person’s capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.



Comment

1. Section 204 sets forth the rules for determining when property is acquired by the partnership and, hence, becomes partnership property. It is based on UPA Section 8(3), as influenced by the recent Alabama and Georgia modifications. The rules govern the acquisition of personal property, as well as real property, that is held in the partnership name. *See* Section 101(9).

2. Subsection (a) governs the circumstances under which property becomes "partnership property," and subsection (b) clarifies the circumstances under which property is acquired "in the name of the partnership." The concept of record title is emphasized, although the term itself is not used. Titled personal property, as well as all transferable interests in real property acquired in the name of the partnership, are covered by this section.

Property becomes partnership property if acquired (1) in the name of the partnership or (2) in the name of one or more of the partners with an indication in the instrument transferring title of either (i) their capacity as partners or (ii) of the existence of a partnership, even if the name of the partnership is not indicated. Property acquired "in the name of the partnership" includes property acquired in the

name of one or more partners in their capacity as partners, but only if the name of the partnership is indicated in the instrument transferring title.

Property transferred to a partner is partnership property, even though the name of the partnership is not indicated, if the instrument transferring title indicates either (i) the partner's capacity as a partner or (ii) the existence of a partnership. This is consonant with the entity theory of partnership and resolves the troublesome issue of a conveyance to fewer than all the partners but which nevertheless indicates their partner status.

3. Ultimately, it is the intention of the partners that controls whether property belongs to the partnership or to one or more of the partners in their individual capacities, at least as among the partners themselves. RUPA sets forth two rebuttable presumptions that apply when the partners have failed to express their intent.

First, under subsection (c), property purchased with partnership funds is presumed to be partnership property, notwithstanding the name in which title is held. The presumption is intended to apply if partnership credit is used to obtain financing, as well as the use of partnership cash or property for payment. Unlike the rule in subsection (b), under which property is **deemed** to be partnership property if the partnership's name or the partner's capacity as a partner is disclosed in the instrument of conveyance, subsection (c) raises only a **presumption** that the property is partnership property if it is purchased with partnership assets.

That presumption is also subject to an important caveat. Under Section 302(b), partnership property held in the name of individual partners, without an indication of their capacity as partners or of the existence of a partnership, that is transferred by the partners in whose name title is held to a purchaser without knowledge that it is partnership property is free of any claims of the partnership.

Second, under subsection (d), property acquired in the name of one or more of the partners, without an indication of their capacity as partners and without use of partnership funds or credit, is presumed to be the partners' separate property, even if used for partnership purposes. In effect, it is presumed in that case that only the use of the property is contributed to the partnership.

4. Generally, under RUPA, partners and third parties dealing with partnerships will be able to rely on the record to determine whether property is owned by the partnership. The exception is property purchased with partnership funds without any reference to the partnership in the title documents. The inference concerning the partners' intent from the use of partnership funds outweighs any inference from the State of the title, subject to the overriding reliance interest in the case of a purchaser without notice of the partnership's interest. This allocation of

risk should encourage the partnership to eliminate doubt about ownership by putting title in the partnership.

5. UPA Section 8(4) provides, “A transfer to a partnership in the partnership name, even without words of inheritance, passes the entire estate or interest of the grantor unless a contrary intent appears.” It has been omitted from RUPA as unnecessary because modern conveyancing law deems all transfers to pass the entire estate or interest of the grantor unless a contrary intent appears.