

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

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.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*

Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

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-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED'S REPLY TO YUSUF'S OPPOSITION
TO HAMED'S MOTION TO COMPEL RE REVISED CLAIM H-151:
CHECKS WRITTEN FOR FATHI YUSUF'S PERSONAL USE**

I. Introduction

Hamed filed his Motion to Compel regarding Hamed's revised claim, H-151: Checks Written for Fathi Yusuf's Personal Use on August 8, 2021. Yusuf filed his Opposition on February 3, 2022.

II. Yusuf's Opposition

This reply is following the order of the Yusuf Opposition.

A. Interrogatory 38

1. *Assets and amounts transferred to or from Fathi Yusuf*

Yusuf alleges that this Interrogatory: 1) has been limited by the Special Master's September 5, 2021 Order, and 2) information regarding all assets or amounts have already been provided by Yusuf when a copy of the Sage 50 accounting program's raw data was provided to Hamed.

Yusuf has not provided a verified interrogatory response listing any assets or amounts in excess of \$10,000 that have been transferred *to* Yusuf or *from* Yusuf that originated from Partnership funds.

Yusuf states that all this information is present in the Sage 50 accounting system. There are three issues with this response. First, Hamed needs to know for his defense what the universe of Partnership assets and dollars Yusuf claims that were transferred to or from him. That information should simply be listed in a verified statement to provide an estoppel on any other amounts being added or subtracted prior to a hearing on this claim. This is basic discovery practice. Second, Sage 50 is not going to contain amounts or assets that Fathi Yusuf transferred on that originated from Partnership funds – that is

the entire basis of this case, not all funds ran through proper accounting. Again, this information should simply be put in a verified statement—and if the answer is “none”, THAT should be in a verified response. **Third, and most important, Yusuf has not made any verified statement that *all assets* were listed in the Sage 50 system.** For example, are properties purchased with Partnership funds listed in Sage 50? No. Anything in excess of \$10,000 where Partnership funds (in part or in whole) were used must be listed in a verified statement.

2. Transfers To and From United Corporation Accounts

Hamed's response to Yusuf's objections regarding all assets and amounts in excess of \$10,000 is the same as his responses to Yusuf's objections regarding amounts and assets in excess of \$10,000.

Yusuf also claims that the parties had dual signature requirement. This is obviously not true: The 2012 \$2.7 million dollar check written to Fathi Yusuf (revised Claim H-2) demonstrates this rule was not a bar to Yusuf writing an unauthorized check to himself. In any event, Rule 33 of the Virgin Islands Rules of Civil Procedure does not have an exception for responding to interrogatories where the parties had a dual signatures “rule.” He should answer.

Yusuf's other point, that no cancelled checks are available for the Partnership bank accounts, is irrelevant and wrong (see B.2 below). This is an interrogatory, so a production of cancelled checks is not required for a response to Interrogatory 38.

B. Request for Production of Documents (“RFPDs”) No. 4

Yusuf contends in his Opposition that 1) this request should go to John Gaffney, the Partnership's accountant, 2) John Gaffney does not have all of the cancelled checks,

3) checks from 2001-2012 are in the BDO report and any others that Hamed wants, but are not present in BDO Table 35(b), must identified by Hamed and 4) distributions to each of the Partners fell off after the government sent in monitors and the salaries of each Partner was increased.

1. This RFPDs properly rests with Yusuf, not John Gaffney

The parties in early 2018 came to an agreement as to which claims John Gaffney would answer (Part A claims) and which claims Yusuf and Hamed would cover (Part B claims). (See January 29, 2018 Joint Discovery and Scheduling Plan) The Special Master allowed the parties to move claims between the two categories by joint agreement in 2018. (November 27, 2018) **Yusuf is now trying to unilaterally change that agreement by evading a response to this document request.** Hamed objects, as the Part A and Part B claims have been settled since 2018—Yusuf had the opportunity in 2018 when the Joint Discovery and Scheduling Plan was being developed to make this claim a Part A claim, but chose not to do so.

2. John Gaffney does not have all the cancelled checks

Hamed isn't asking for things that Gaffney or Yusuf do not have. Rather, Hamed is asking for any cancelled checks Yusuf or the Partnership has from 2006 to the present, as well as bank statements. As a part of a May 17, 2016 submission to explain journal entries to Hamed, John Gaffney made the following statements about the availability of bank statements and cancelled checks:

Copies of cancelled checks are not available as these payments were made after the banks were threatened by liability and began refusing to supply copies of enclosures as of August 2013. . . . (**Exhibit 10**, p. 445)

SoctiaBank never even provided monthly bank statements for the Plaza St. Thomas operating account ending in 2010. . . . Margie Soeffing first informed me of this issue in November 2012. Disbelieving her, I made repeated phone calls and visits to their Red Hook branch in early 2013 and only succeeded in getting their agreement to provide daily statements on a "Hold for Pickup" basis. . . .The process was so tedious and worthless that in frustration, I resorted to using online screen prints of activity to reconcile cash just as Margie had done before me. . . .**(Exhibit 10, p. 457)**

Banco Popular provided complete monthly bank statements with enclosures through July 2013. Then suddenly and without warning they stopped including copies of enclosures for the two operating accounts (Plaza East a/c ending in 8830 and Plaza Wes a/c ending in 6269). . . . **(Exhibit 10, p. 457)**

Margie used to order copies at a cost because Scotiabank had a long-standing practice of not providing enclosures or copies for our STT operating account ending in 2010. **(Exhibit 10, p. 761)**

A careful review of the Gaffney statements reveals the following:

- Banco Popular was providing statements until at least August 2013, which included the operational accounts for Plaza Extra East and West.
- Scotiabank did provide daily statements in early 2013 that were provided on a "Hold for Pickup" basis. Because this process did not work for John Gaffney, he started using online screen printings of activity just as the prior controller did.
- The prior controller ordered copies of either statements or cancelled checks (it's unclear from Gaffney's statement) at cost from Scotiabank.
- No mention is made regarding what was available prior to 2012.

Clearly there are documents responsive to Hamed's request that Yusuf has and is not producing. Just because Yusuf does not have all of the requested documents, he is not excused from producing those documents he does have that are responsive to the request.

3. Checks from 2001-2012 are in the BDO report

No Partnership checks are listed for Fathi Yusuf from 2006-2010, not even his Partnership paychecks. No Partnership bank statements are included in the BDO report

from 2006 to the present either, as was requested in RFPDs 4. This is impossible and a critical point.

Further, Rule 34 does not require the party doing discovery to guess at what the other party is holding in terms of documents and then make a list requesting those documents. That is what Yusuf is trying to do when he stated “[t]o the extent that there are additional checks to which Hamed seeks clarification not otherwise listed in Table 35(b), please identify same and this response will be supplemented.” Opposition at p. 3.

4. Distributions to the Partners fell off after Government Monitors Arrived and Salaries were Increased

While it is an interesting note that cash Partnership withdrawals fell after the government sent in monitors and Partnership salaries were increased, it still is an unresponsive answer to Hamed's RFPDs 4. Yusuf has a duty to produce any cancelled Partnership checks and bank statements that are in his control.

5. Yusuf failed to respond to Hamed's request for bank statements or cancelled checks written on Partnership accounts to Yusuf's United Corporation

Yusuf has not provided any bank statements or cancelled checks that show amounts written to Yusuf's United Corporation. Again, any cancelled checks/bank statements that he has from 2006 to present must be produced.

C. RFPD 40

Hamed withdraws RFPD 40.

III. Conclusion

The order should explicitly and specifically be directed at Mr. Yusuf – not his counsel. Hamed asks that the order note that another non-response will be treated as contempt.

Hamed's interrogatory and request for documents discussed above clearly fall within Rule 26's scope allowing discovery regarding **"any nonprivileged matter that is relevant to any party's claim or defense."** (Emphasis added). We are at an absurd point. Negotiation has not worked. Drafting of stipulations with counsel has not worked. The records is clear that Hamed has patiently and repeatedly been trying in good faith to get responses to this discovery since *May 15, 2018*, with no success once the matter goes back to Mr. Yusuf for his cooperation. Accordingly, Hamed respectfully requests that the Master compel Yusuf, personally to answer Interrogatory 38 and RFPDs 4 and 40 – and to verify those responses as having come from him, not counsel.

Dated: February 22, 2022



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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February 2022, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross

Special Master
edgarrossjudge@hotmail.com

Charlotte Perrell

Stefan Herpel

Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



Exhibit 10

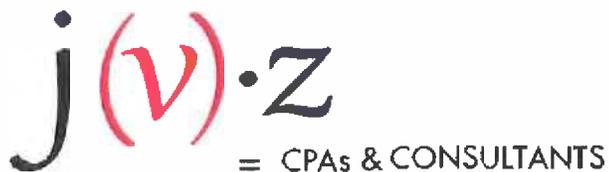
Engagement Report
Joel H. Holt, Esq.
c/o Plaza Supermarket Partnership and Subsidiaries

EXHIBIT
10

~~Exhibit:~~

~~B-2~~

JVZ-000001



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September 28, 2016

Joel H. Holt, Esq.
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Re: Mohammad Hamed, et.al v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

Jackson Vizcaino Zomerfeld, LLP (JVZ or we) is a licensed Certified Public Accountant firm in the U.S. Virgin Islands.

You have retained us to render an expert opinion in the litigation captioned Hamed v. Yusuf et al., docket number Civ. No. SX-12-CV-370. Attached is our analysis of the financial accounting for January 1, 2012 through June 30, 2016 as per Fathi Yusuf.

For the Firm

JACKSON, VIZCAINO ZOMERFELD, LLP

MEMBERS OF:

American Institute of Certified Public Accountants
Florida Institute of Certified Public Accountants
National Association of Certified Valuation Analysts
Texas State board of Public Accountancy
Virgin Islands Board of Accountancy

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EXHIBITS

List of documents provided:

1. Prepaid Insurance Schedules from 2013 to 2015.
2. Copies of three PE East Banco a/c 8830 statements matching 3 payments made in 2013 and 2014 covering insurance through the store split dates. Copies of cancelled checks are not available as these payments were made after the banks were threatened by liability and began refusing to supply copies of enclosures as of August 2013. Again, I have no copies of bank records for the STT operating accounts as those records were withheld by Willie Hamed after the STT auction. The Hameds obviously have copies of cancelled checks paying for insurance since the five checks included as Exhibit 8 to Yusuf's opposition to the motion to remove him as Liquidating Partner have Hamed Bates numbers. These checks date from July 2002 through May 2014 and all were signed by a Hamed.



Item No. 3010

Description: Vendor rebates (e.g., West Indies, Frito Lay/Pepsico, BJs, Associated Grocers, Tropical Shipping, Bellows and Hunter Foods)

General Ledger-Store, Date, Entry No. & Description [as an example] (if applicable)
GL Acct #58000

Question/Request for Info:

See attached requested vendor rebates previously emailed to you on 1/21/16 by VZ (see last page for the list). Please provide statements or invoices from vendor for items in list.

Response:

ScotiaBank never even provided monthly bank statements for the Plaza St. Thomas operating account ending in 2010. While they provided monthly bank statements for the payroll and telecheck accounts, repeated requests for monthly statements for the operating account fell on deaf ears. Margie Soeffing first informed me of this issue in November 2012. Disbelieving her, I made repeated phone calls and visits to their Red Hook branch in early 2013 and only succeeded in getting their agreement to provide daily statements on a "Hold for Pickup" basis. Making matters worse, I could never rely on whether all days during a month were provided. When I picked up daily statements, there were always days missing which always took several more weeks to obtain. The process was so tedious and worthless that in frustration, I resorted to using online screen prints of activity to reconcile cash just as Margie had done before me. You were told this several times.

Humphrey Caswell was hired in March 2013 to first perform payroll processing. After training another new hire to perform payroll duties, he was assigned to improve the accounting and controls over in-store charges (i.e. Accounts Receivable). Humphrey had an accounting degree and demonstrated significant accounting skills from the start. As a result, he was promoted to Assistant Controller. Disbelieving my failure to get monthly statements from Scotia, he too attempted to get them during the last six months of 2013 and finally resigned himself to using online screen prints in lieu of monthly or daily bank statements. Despite not having monthly statements, Humphrey maintained excellent records of daily and monthly work in St. Thomas. Following the store auction on April 30, 2015, I attempted to obtain his monthly files from January 2013 through April 2015 and Willie Hamed refused to allow me or even Humphrey to enter the store to obtain those records which included cash reconciliations and the screen prints used to reconcile cash monthly.

Banco Popular provided complete monthly bank statements with enclosures through July 2013. Then suddenly and without warning they stopped including copies of enclosures for the two operating accounts (Plaza East a/c ending in 8830 and Plaza Wes a/c ending in 6269). When we asked to restore the provision of cancelled checks, they pretended having no knowledge and even challenged me that I ever received cancelled checks. They remained very evasive and would never give a straight answer about why they stopped providing copies of cancelled checks.

Although neither ScotiaBank nor Banco Popular would ever clearly state why they wouldn't provide complete statements, it was clear neither wanted to be subjected to unnecessary liability. It was my belief that they felt the less we had the less they could be held responsible for. Of course, they were compelled to scrutinize so many checks to ensure two signatures (one from each family) that the service we received was severely lacking. There were instances when 50 checks were returned for no reason at all. These instances created tremendous accounting challenges and countless bank charges, too numerous to attempt recovery from due to lack of accounting resources.

Neither ScotiaBank nor Banco would open any new accounts for United Corporation. Furthermore, we suffered more than one instance where we were asked to close our accounts and take our business elsewhere. And indeed our accounts were involuntarily closed by ScotiaBank at the end of 2015. Fortunately, Banco Popular remains as trying as it was to open any new accounts.

Included herein are copies of vendor reports for credit cards used at Plaza East. These reports reflect all activity since January 1, 2013 (the accounting conversion date). Prior to 2013, it is impractical if not impossible to provide all credit card activity as vendor accounts for credit cards never reflected activity properly. Sample general ledgers for the months of December 2012 and January 2013 are provided to demonstrate the deficiencies prior to my employment. Note that in 2012 all freight activity was rolled into single journal entries for St. Croix and in one account for both stores. Note also that in St. Thomas most of the freight was paid using Banco Popular credit cards. However, these payments are not associated with a vendor account for the corresponding Banco Popular credit cards. Instead, the AP clerk would simply change the name on the true vendor's account (probably Tropical Freight) when he or she was making the payment. So while a vendor account might have first been created at Tropical Freight, there were countless payments to the various credit cards actually used to pay Tropical Freight. Add to this the

VIBIR ASSESSMENT DATED 3/07/16 RE FORM 941VI FOR 9/30/14:

~~INCLUDED HEREIN IS AN ASSESSMENT DATED 3/07/16 IN THE AMOUNT OF \$33,505.68. IT CLEARLY RELATES TO PLAZA EXTRA PARTNERSHIP.~~

~~PLEASE REVIEW MY RESPONSE ON APRIL 19, 2016 AND THE DOCUMENTATION SUBMITTED TO SUPPORT THAT PE DOES NOT OWE ANY TAX ON THIS MATTER.~~

~~SINCE THE PE SPLIT IN MARCH AND APRIL OF 2015, I HAVE BEEN DEALING WITH PERSISTENT ISSUES LIKE THIS. AT THE TIME OF THE PE SPLIT, I CAUTIONED THAT IT WOULD BE AT LEAST 3 YEARS BEFORE THE DUST SETTLES ON THE PARTNERSHIP.~~

~~SOME DID NOT AND STILL DO NOT BELIEVE THIS. BUT UPON MY ARRIVAL IN OCTOBER 2012, I BEGAN DEALING WITH ISSUES THAT WERE SEVERAL YEARS OLD. AMONG THE EARLY ISSUES WAS THE FEDERAL UNEMPLOYMENT (FUTA) ASSESSMENT OF \$285,000 RELATED TO TAX YEAR 2010. MARGIE SOEFFING EXPLAINED THE CHALLENGE AND THE EXTENSIVE WORK SHE PERFORMED EACH YEAR ON FUTA. LITTLE DID I KNOW THEN THAT I'D BE DOING THE SAME.~~

~~INCLUDED HEREIN IS ANOTHER SECTION THAT PARTIALLY DESCRIBES THE EXTENT OF MY WORK RELATED TO FUTA AND THE PARTNERSHIP THAT WILL NO DOUBT CONTINUE AT LEAST TWO MORE YEARS.~~

~~MY CHALLENGE TO RESOLVE THESE MATTERS IS PARTICULARLY GREAT BECAUSE I DON'T HAVE COPIES OF CANCELLED CHECKS, NOT DO WE HAVE ANY RELATIONSHIP WITH SCOTIABANK. MARGIE USED TO ORDER COPIES AT A COST BECAUSE SCOTIABANK HAD A LONG-STANDING PRACTICE OF NOT PROVIDING ENCLOSURES OR COPIES FOR OUR STT OPERATING ACCOUNT ENDING IN 2010. MUCH HAS BEEN WRITTEN AND SAID ABOUT THIS PREVIOUSLY. BUT I SUGGESTED EARLY ON THAT WE CLOSE THIS ACCOUNT AND OPEN A NEW ONE AT BANCO POPULAR. LITTLE DID I KNOW THAT THEY TOO WOULD SOON STOP PROVIDING COPIES OF CHECK ENCLOSURES ON OUR OPERATING ACCOUNTS.~~

~~LASTLY, THIS RESPONSE TO THE VIBIR CONSUMED AN ENTIRE DAY TO ASSEMBLE ACCEPTABLE ALTERNATIVE DOCUMENTS VERSUS CANCELLED CHECKS AND TO DRAFT THE LETTER.~~

