

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

MOHAMMAD HAMED, *by his*)
authorized agent, WALEED HAMED,)
)
Plaintiff,)
)
v.)
)
FATHI YUSUF and)
UNITED CORPORATION,)
)
Defendants.)
_____)

CIV. No. 1:12-cv-99

Jury Trial Requested

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE OR FOR A
SUR-REPLY RE PLAINTIFF'S TRO REPLY

The defendants have moved to strike the declaration of Waleed Hamed attached to the plaintiff's TRO reply memorandum or, alternatively, to file a sur-reply. The motion should be denied for two reasons.

First, the motion is nothing more than a delaying tactic since Rule 65 motions are not decided on the moving papers alone. Such relief is only granted after a hearing as noted by Rule 65 (a)(2), which provides in part as follows:

Before or after beginning the **hearing** on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the **hearing**. Even when consolidation is not ordered, **evidence that is received on the motion** and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. (Emphasis added).

Thus, if the defendants feel that it is necessary to rebut any evidence or arguments offered by the plaintiff, they can simply do so at the Rule 65 hearing.

Second, the declaration of Waleed Hamed does not contain any "new" issues as asserted by the defendants. In this regard, the defendants argue in their motion as

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follows:

5. The entire declaration is premised on and supports arguments that are raised for the first time in a reply brief.
6. For example, Waleed Hamed attests for the first time to the purchases of specific “businesses and real property” and other alleged acts involving “the profits from the Plaza Extra supermarkets,” including the alleged “withdrawal” of those profits. W. Hamed Decl. at ¶¶ 2-6.
7. Those specific arguments are not raised in the underlying TRO motion – or even the complaint on which the TRO motion is based.

To argue that these points are new is simply erroneous. In this regard, the issues related to (1) the profits of the three Plaza Supermarket stores being split and (2) the defendants’ improper withdrawal of funds were both raised in the initial declaration submitted by Waleed Hamed (DE 1-5 at p. 14-18), which contained the following averments:

12. At all times relative hereto, my father and Fathi Yusuf have equally shared the profits distributed from the three Plaza supermarkets.
13. In this regard, my father and Fathi Yusuf have also maintained records of all withdrawals from the partnership account to each of them (and their respective family members), to make sure there would always be an equal (50/50) amount of these withdrawals for each partner’s family members.
.....
19. Finally, on or about August 20, 2012, Fathi Yusuf indicated he wanted to withdraw \$2.7 million from the partnership, which my father (through me) refused to agree to. **See Exhibit D.** Thereafter, Yusuf unilaterally and wrongfully converted \$2.7 million from the Plaza Extra supermarket accounts used to operate the partnership’s three stores, placing the funds in a separate United account controlled only by him. Said conversion was a willful and wanton breach of the partnership agreement between my father and Mr. Yusuf. See Exhibit E.
20. Despite repeated demands, Fathi Yusuf has not returned these funds to the Plaza Extra bank accounts from which they were withdrawn.

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Thus, these issues are not new, as both were previously raised in Hamed's initial declaration. As such, the basic premise of the defendants' motion is simply wrong.

In short, this motion is just a delay tactic to avoid having this motion heard. Indeed, the request to file another 20 page memorandum is certainly unwarranted, as the issues are clearly outlined for the Court. As such, it is respectfully requested that the relief sought be denied.

Dated: November 6, 2012

/s/ Joel H. Holt, Esq.

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Dated: November 6, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

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