

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

MOHAMMAD HAMED, by his authorized)	
agent WALEED HAMED,)	
)	CIVIL NO. SX-12-CV-99
Plaintiff,)	
v.)	
)	ACTION FOR DAMAGES,
FATHI YUSUF and UNITED CORPORATION,)	INJUNCTIVE AND
)	DECLARATORY RELIEF
)	
Defendants.)	JURY TRIAL DEMANDED
)	

PLAINTIFF’S OPPOSITION TO DEFENDANTS’ RULE 12 MOTION

Defendants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) have filed a Rule 12(b)(6) motion to dismiss (DE 28 and 29) the First Amended Complaint (DE 15). For the reasons set forth herein, it is respectfully submitted the motion should be denied.

I. Preliminary Comments

In their memorandum in support of the Rule 12 motion (DE 29), defendants conceded on page 3 what Plaintiff has alleged, making the following admission:

In 1986, due to financial constraints, Defendant Yusuf and Plaintiff Hamed entered into an oral joint venture agreement. The agreement called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets....Plaintiff Hamed received 50% of the net profits thereafter. (Emphasis added)

The effect of these concessions is that defendants have admitted:

- A. there is an agreement with the plaintiff to share 50% of the profits of the Plaza Extra supermarket operations,
- B. made pursuant to an oral agreement (now affirmed in writing),
- C. which was entered into before the opening of the first store in 1986,
- D. which is still in effect,
- E. with payments of 50% of profits due to the plaintiff from 1986 on.

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Thus, there is no difference between what is factually alleged in the Amended Complaint and what defendants admit in the instant motion as to the EXISTENCE of an agreement to share the profits of the three Plaza Extra supermarkets.

The only dispute now appears to be whether the admitted relationship should be called a "partnership" or a "joint venture." This "semantic" dispute is irrelevant in the Virgin Islands, which follows the "fundamental rule of law" that a joint venture is a subspecies of partnership and is thus subject to the UPA. *Boudreaux v. Sandstone Group*, 1997 WL 289867, 6 (Terr.Ct. 1997).¹ With this comment in mind, it is appropriate to turn defendants' Rule 12 motion.

II. Rule 12(b)(6)

Defendants first argue that the motion should be dismissed under Rule 12(b)(6). As noted by this Court in *Watts v. Blake-Coleman*, 2012 WL 1080323 at 1 (D.V.I. 2012):

In order to survive a motion to dismiss, a plaintiff must offer 'enough facts to state a claim to relief that is plausible on its face.' A court must ask whether the complaint 'contains either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory.' (Emphasis in original) (Citation omitted)

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. Thus, [t]o survive a motion to dismiss, a ... plaintiff must allege facts that raise a right to relief above the

¹ See also *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md.App. 236, 247, 603 A.2d 1357, 1362 (Md.App. 1992) ("As a partnership, the Joint Venture's conduct is governed by the Maryland UPA"); *Austin v. Truly*, 721 S.W.2d 913, 920 (Tex.App. 1986) ("It is a fundamental rule of law that a joint venture, such as this one is, is also a general partnership. Being a general partnership, this venture is subject to the Texas UPA"); *Stone-Fox, Inc. v. Vandehey Development Co.*, 290 Or. 779, 785, 626 P.2d 1365, 1368 (Or. 1981) ("This court has consistently held that partnership law controls joint ventures.") and *Barrett v. Jones, Funderburg, Sessums, Peterson & Lee, LLC*, 27 So.3d 363, 372 (Miss. 2009) ("As a joint venture, SKG was governed by Mississippi's partnership law, the [UPA] of 1997. . .")

speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact). (Quotations omitted) (Citations omitted)

In addressing the particularity of the claim alleged, this Court noted further in *Watts*:

To determine the sufficiency of a complaint . . . a court must take three steps: First, the court must take note of the elements a plaintiff must plead to state a claim. . . . Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. . . . Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief. (Quotations omitted) (Citations omitted) *Id.* at 2.

Defendants concede (at 7-8 of their Rule 12 memorandum) that the Court should consider the allegations in the complaint, any attached exhibits and undisputable matters of public record. The three Counts in the amended complaint clearly meet this standard.

A. Counts I & II - Statutory Relief For a Partner under Title 26

Count I seeks declaratory relief and injunctive relief pursuant to the Virgin Islands partnership statutes, as expressly permitted in 26 V.I.C. §75. Plaintiff avers the existence of a partnership and its specific terms. Count II then seeks additional, specific statutory relief against Fathi Yusuf pursuant to 26 V.I.C. §121(5) -- to obtain plaintiff's equal share of the partnership profits and protect his equal participation in the operations. These rights of a partner are protected by Title 26:

§ 71. Partner's rights and duties

...
(a) Each partner is entitled to an equal share of the partnership profits . . .

...
(f) Each partner has equal rights in the management and conduct of the partnership business. (Emphasis added.)

In Count II, the plaintiff seeks additional relief -- allowing him to remove Yusuf from the partnership under the provisions of 26 V.I.C. §121(5) by forcing a "selling out" of his interests (due to his wrongful acts) while continuing the partnership's existence.

With these points in mind, the first requirement for proper pleading of a complaint is set forth in *Watts*—establishing what elements need to be proved to obtain such relief. It is quite straightforward in this case. Mohammad Hamed has averred facts demonstrating that there is a partnership between himself and Fathi Yusuf, and is thus entitled to pursue these statutory rights. Again, Title 26 makes this task clear, as it provides in part as follows:²

§ 22. Rules for determining the existence of a partnership

In determining whether a partnership exists, these rules shall apply -

...
(4) The receipt by a person of a share of the profits of a business **is prima facie evidence** that he is a partner in the business. . . . (Emphasis added).

In this case there is an outright admission made by defendants that a 50/50 “share of the profits” was agreed to, which profits have been continuously due to and received by plaintiff. Thus, there is “prima facie evidence” that a partnership exists (as it is defined in this jurisdiction) and has been “proved” for the purpose of Rule 12 by operation of law under this UPA provision, codified in 26 V.I.C. §22, by a preponderance of the evidence. *See e.g. DeMarchis v. D’Amico*, 637 A.2d 1029, 1034 (Pa. Super. 1994) (interpreting this same UPA provision):

In determining whether a partnership exists [this section] provides that ‘[t]he receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business ...’ In the instant case, the trial court found that \$40,000.00 was withdrawn from an investment account containing proceeds of the business and appellants received \$20,000.00 of that money. **The trial court was**

² Title 26 enacted the Uniform Partnership Act (UPA). The Legislature adopted an amended version in 1998, but original sections are almost identical to the language now in effect as it relates to these rights. While the changes are not significant, because this partnership was formed in 1986, the provisions of the original act cited here covers the issues related to the formation of the partnership. *See, Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 514 (D.V.I. 2001) (“The amendment was enacted on February 12, 1998, and by its express terms took effect May 1, 1998. . . .The Court must therefore look to the previous statute for guidance.”)

required to view this fact as *prima facie* evidence that a partnership existed between appellants and appellees for the operation of the automotive repair business, which if unrebutted, would remain sufficient to establish the existence of a partnership. Once the evidence of a profit distribution was introduced, **the burden of proof *shifted* to appellees, as the party denying the partnership's existence, to show that the payment was *not* a profit distribution, or that a partnership did not exist.** (Emphasis added.)

Clearly the first prong under *Watts* is met with regard to a Rule 12 motion by defendants' admission of an agreement regarding the sharing of profits.

The second and third prongs under *Watts* are to delete "conclusory allegations" and then to look at the remaining "well pleaded facts" to see if the amended complaint has sufficiently pled facts that would support the relief sought. In this regard, it is respectfully submitted that the following allegations in the amended complaint certainly meet that requirement, which alleged in part (DE-15):

5. In the 1970's, Mohammad Hamed opened and operated a successful grocery business on St. Croix.
6. In the early 1980's, Yusuf began to build a shopping center at Sion Farm, St. Croix, which he hoped would include a supermarket, even though he had never operated a grocery business before.
7. During the construction of that shopping center, Yusuf continually ran out of money and was unable to get any loans from any banks. As such, he sought help from Mohammed Hamed, which Mohammed Hamed agreed to provide.
8. Mohammad Hamed provided funds to complete the construction of the shopping center. In addition, when more funds were needed to create and open the supermarket, Mohammad Hamed sold his grocery store and contributed all of his life savings to the supermarket project in addition to the funds previously provided for the shopping center construction, devoting his full time and energy to getting the supermarket open as well.
9. During this time period, Mohammad Hamed and Yusuf agreed to enter into a 50/50 partnership (hereinafter referred to as the "Partnership") to create, fund and operate this new grocery supermarket business, which they named Plaza Extra Supermarket. It was located in the shopping center.
10. As both Mohammed Hamed and Yusuf agreed to contribute their time and their personal funds to create this Partnership, both risked the loss of their significant initial investments. Moreover, they both agreed that going forward each partner was responsible for 50% of all losses, and was entitled to 50% of all profits from the supermarket business' operations. Indeed, defendants have admitted that the

profits of the grocery business were shared with plaintiff -- in pleadings filed in this case.

11. When the supermarket at Sion Farm opened in 1986, Mohammad Hamed used his experience and contacts in the grocery business to get the store stocked and open successfully.
12. The Partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end of St. Croix (both built and initially stocked from the profits of the Partnership) and one in St. Thomas (also both built and initially stocked from the profits of the Partnership). Both of these supermarkets were also operated under the name Plaza Extra. The Partners generally refer to these three stores as Plaza Extra East (Sion Farm, St. Croix), Plaza Extra West (Plesson/Grove, St. Croix) and Plaza Extra St. Thomas (Tutu Park, St. Thomas). These supermarkets have grown in size, currently employing in excess of 600 employees in the three stores.
13. At all times relative hereto, the three Plaza Extra supermarkets have been managed jointly by the Partnership, with each Partner having an active role in the operations of the three stores either through their direct actions or through the actions of their authorized agents. In this regard, each Partner always has had a designated family member in a top managerial position in each store, acting as each Partner's representative and agent. The designated managers from each Partner's family jointly manage the respective stores together.
14. The Partnership has always had separate, segregated books and accounts for each of the three Plaza Extra Supermarkets, and kept a detailed accounting open to both partners for the expenses and profits of the Partnership wholly separate from the unrelated business operations of United in its operation of the United shopping center located at Sion Farm St. Croix.
15. As part of his Partnership activities Yusuf made the decision that the reporting of all accounting and other filings for these Partnership operations to the Government would be done by United, such as all tax filings and similar matters -- he provided the services of United as part of his partnership contribution, to which Mohammad Hamed did not object.
16. The bank accounts for the three Plaza Extra supermarkets were created for the benefit of, and have always been accessible to (and transacted on) equally by the partners, Mohammad Hamed and Yusuf, with the Partners agreeing that -- to maintain management control -- Yusuf and Hamed (or one family member from each of the Hamed and Yusuf families as their agents) would sign each check written on these supermarket bank accounts. . . .
17. United has always had completely separate accounting records and separate bank accounts for its operations of the "non-supermarket" shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate "non-supermarket" United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.

18. At all times relative hereto, the Partnership profits from the Plaza Extra stores have always been held in the identified "supermarket" banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Partnership are in accounts solely used by the Partnership and kept for the Partnership by United in segregated United accounts. . . .
19. At all times relative hereto, for more than 25 years, Mohammad Hamed and Yusuf have equally shared all the profits distributed by United to the Partnership -- from the operation of the three Plaza supermarkets -- and been responsible for all losses. Except for the recent unauthorized removal of funds described herein, for 25 years, all such distributions from the supermarket accounts have been split 50/50 between the Partners.
20. The partners also agreed that all stores would employ and would rely on joint decisions of themselves (or their respective family members from each family assigned to each store), so that management would be by a working consensus of the two Partners directly or through their designated agents, all of whom are family members.
21. From time to time, Mohammad Hamed and Yusuf have used these profits, distributed solely from these "supermarket accounts" to buy other businesses and real property -- always then owning these jointly held assets, regardless of the form of ownership, on a 50/50 basis. ...[identifying several such assets]
22. In this regard, Hamed and Yusuf have also scrupulously maintained records of withdrawals from the United-held "supermarket" Partnership profit account to each of them (and their respective family members), to make certain there would always be an equal (50/50) amount of these withdrawals for each partner

Applying the *Watts* test ("ignore conclusory allegations and look at the well-pleaded facts") these allegations in the amended complaint easily satisfy the pleading requirements under the federal rules to establish the existence of a partnership as alleged in Count I.

However, the Court need not stop there. The amended complaint goes on to incorporate several exhibits that include admissions made by Yusuf reinforcing the numbered paragraphs averring a partnership between the parties. (DE-15, 1-5)

One such exhibit is the sworn testimony of Fathi Yusuf as to the specifics of the formation, terms and actions of this partnership. (DE 15-1)³ This deposition was given in 2000, just before any of the legal issues arose between the parties. Yusuf and United were joint defendants in that action -- represented by joint counsel at the deposition. This sworn statement is, therefore, untainted. At the very outset, Yusuf admits that he owned only "50 percent of **Plaza Extra** in 1986," and made the distinction that he owned **100% of the "United Shopping Plaza"** (**Exhibit 1** at p. 8:1-14) (Emphasis added). This supports the factual averment by Mohammed Hamed that his partnership in the Plaza Extra supermarket operations began in the mid-1980's. Yusuf then explains in detail how no bank would loan him funds while he tried to build the shopping center because he did not have any formal specifications. (**Exhibit 1** at p. 10:1-21) He then describes how, when he was broke, plaintiff saved this project. This supports the averment that plaintiff contributed to the partnership capital. (**Exhibit 1** at pp. 14:5-15:14) (emphasis added):

When I was in the financial difficulty, when I was in financial difficulty, my brother-in-law, he knew. I shouldn't -- he started to bring me money. Okay? He own a grocery, Mohammed Hamed, while I was building, and he have some cash. He knew I'm tight. He started bring me money. Bring me I think 5,000, 10,000. I took it. After that I say, Look we Family, we want to stay family. I can't take no money from you because I don't see how I could pay you back. So he insisted, Take the money. If you can afford to, maybe pay me. And if you can't, forget about it. Okay. He kept giving me. I tell him, Under this condition I will take it. I will take it. He kept giving me until \$200,000. **Every dollar he make profit, he give it to me. He win the lottery twice, he gave it to me. All right? That time the man have a little grocery, they call Estate Carlton Grocery. Very small, less than 1,000 square foot, but he was a very hard worker with his children.** And it was, you know, just like a convenience mom-and-pop stores. He was covering expenses and saving money.

I say, Brother-in-law, **you want to be a partner too? He said, Why not?** You know, as a family, we sit down. Says, How much more can you raise. Say, I could raise 200,000 more. **I said, Okay. Sell your grocery. I'll take the two hundred, four hundred. You will become 25 percent partner. So we end up I'm 25**

³ These excerpts attached to the amended complaint are also attached hereto as Exhibit 1 to assist the Court.

percent, my two nephew 25 each, and my brother-in-law, Mohammad Hamed, 25 percent. I don't recall the year, could be '83 or '84, but at least thanks God in the year that Sunshine Supermarket opened, because his supermarket is the one who carries these two young men and my brother to go into supermarket with me. So I have their money, I finish the building.

Yusuf then continued by explaining how the other two partners decided to leave, resulting in plaintiff becoming his 50% partner in the supermarkets. This supports the averment that his contribution (and he himself) were fully exposed both to the loss of these funds and obligations to pay off other investors. (**Exhibit 1** at pp. 17-19:6-10) (emphasis added):

Then, but when I been denied [for loans], I have to tell my partner what's going on. I been entrusted to handle the job perfect, and I am obligated to report to my partner to anything that happened. I told my nephews and I told my partner, Hey, I can't get a loan, but I'm not giving up. So two, three days later **my two nephews split, say, We don't want to be with you no more, and we want our money.** I say I don't have no money to pay you. . . .

We come to an agreement, I pay them 12 percent on their money, and 150,000 default because I don't fulfill my commitment. I accepted that. We wait until my partner, which is my brother, came. He's an older man. And we came up to Mr. Mohammed Hamed, I say, You want to follow them? He say, Yeah, I will follow them, but do you have any money to give? **I say, Look, Mr. Hamed, you know I don't have no money.** It's in the building, and I put down payment in the refrigeration. But if you want to follow them, if you don't feel I'm doing the best I can, if you want to follow them, you're free to follow them. I'll pay you the same penalty, 75,000. I will give you 12 percent on your 400,000.

He says, Hey. If you don't have no money, it's no use for me to split. **I'm going to stay with you.**

All right. I say, Okay. You want to stay with me, fine. I am with you, I am willing to mortgage whatever the corporation own. Corporation owned by me and my wife at that time. **And my partner only put in \$400,000. That's all he put in, and he will own the supermarket.** I have no problem. I told my partner, **Look, I'll take you under one condition. We will work on this, and I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000. If I lose 400,000 to match your 400,000, I have all the right to tell you, Hey, we split, and I don't owe you nothing.**

They say, Mr. Yusuf, we knows each other. I trust you. I keep going. Okay. Now, I told him about the two partner left, **Mr. Hamed. You know, these two guys, they left, my two nephew, they was your partner and my partner. I give you a choice. If you pay penalty with me and pay the interest with me, whatever they left is for me and you.** But if I must pay them the one-fifty penalty and pay them 12

percent, **then Plaza Extra Supermarket will stay three-quarter for Yusuf and only one-quarter for you.**

He says, Do whatever you think is right. **I tell him, You want my advice? I be honest with you. You better off take 50 percent. So he took the 50 percent.**

Yusuf concluded this testimony stating (**Exhibit 1** at p. 20:10-12) (emphasis added):

Every single Arab in the Virgin Islands knew that Mr. Mohammed Hamed is my partner, way before Plaza Extra was opened.

Thus, this sworn testimony, which was incorporated into the amended complaint, is an admission against interest as to how this 50/50 partnership was established between Yusuf and Mohammad Hamed -- and its terms.

In short, Count I sets forth a cause of action and then pleads sufficient facts to support the requested relief if proven at trial, based on the allegations contained in the amended complaint and the exhibits attached thereto.

Once a partnership is established under Count I, the Rule 12(b)(6) analysis for Count II becomes simple. Count II merely seeks additional relief under 26 V.I.C. §121(5) -- to terminate the partnership, pay out Yusuf for his interest and allow the plaintiff to continue operating the three Plaza stores without him. To obtain such relief, the plaintiff need only prove sufficient facts to satisfy one of the elements of §121(5), which allows a partner to have another partner removed upon a showing that the partner being removed has engaged in wrongful conduct that has materially affected the partnership or to make it no longer reasonably practicable to carry on the partnership business.

To defeat defendants' Rule 12(b)(6) motion, the plaintiff need only plead facts which would support such relief if proven, which the amended complaint contains:

28. Notwithstanding this fact, Yusuf has engaged in and continues to engage in numerous acts in breach of his obligations and duties as a partner in his partnership with Hamed, all of which are designed to undermine the

Partnership's operations and success, including but not limited to the following acts:

- a) Threatening to terminate the Hamed family employees in the three Plaza Extra stores;
 - b) Threatening immediate eviction of the Partnership and the Plaza Extra supermarket from the United shopping center on the east side of St. Croix. . . which would close the stores -- including the threat of using illegal self-help to immediately remove the Partnership's supermarket from the premises in violation of the law prohibiting a landlord from using self help to try to remove a tenant;
 - c) Attempting to have United impose excessive rent obligations on this store inconsistent with all other leases. . . to try to close down the Sion store;
 - d) Failing to recognize the Partnership's rights in the premises where its Plaza Extra store in the United Shopping Center is located, as the store was damaged by fire in 1992 and was rebuilt entirely with insurance funds from the Plaza Extra supermarket and not from United, including using said Partnership funds for the purchase of additional adjacent land for use by the supermarket (which is, unlike the rest of the shopping plaza, a Partnership asset);
 - e) Attempting to verbally discredit the operations of the Partnership;
 - f) Attempting to unilaterally change how the stores have operated by threatening to impose new and unilateral restrictions on the operations of these three stores, all of which are aimed at undermining Hamed's partnership interest in the three stores.
 - g) Refusing to pay valid obligations owed by the Partnership in an effort to undermine the Partnership's operations;
 - h) Threatening to close down the Plaza Supermarkets;
 - i) Threatening the Hamed family members working in the Plaza supermarkets with physical harm, trying to intimidate them into leaving the stores;
 - j) Giving false information to third parties, including suppliers of the three Plaza Supermarkets, regarding its future operations -- jeopardizing the good will of the Three Plaza supermarkets;
 - k) Unilaterally canceling orders placed with vendors and not ordering new inventory for the three Plaza supermarkets; and
 - l) Spending funds from the bank accounts of the three Plaza supermarkets to support his other personal business interests unrelated to the three Plaza supermarkets.
29. On or about August 20, 2012, Yusuf unilaterally and wrongfully converted \$2.7 million from Plaza Extra "supermarket accounts" used to operate the Partnership's three stores, placing the funds in a separate "non-supermarket" United account controlled only by him. Said conversion was a willful and wanton breach of the Partnership agreement between Hamed and Yusuf.
30. Despite repeated demands, he has not returned these funds to the Plaza Extra "supermarket accounts" from which they were withdrawn, which not only violates the Partnership agreement, but also threatens the financial viability of these three Plaza supermarkets and the employment of its 600 employees.

31. Upon information and belief, Yusuf has used additional Partnership funds to purchase other assets in United's name, such as real property on St. Croix recently purchased for \$1.7 million.
32. Upon information and belief, Yusuf has also now diverted more than \$1.6 million in partnership funds from the Partnership interest the Dorthea Property and, upon information and belief based on a statement he made to Waleed Hamed, removed those funds to a place out of the jurisdiction of the Court.
33. The acts in question were designed in part to take advantage of Mohammad Hamed's health to force him out of the Partnership and deny him his rightful partnership assets and profits.
40. The foregoing acts by Yusuf also constitute intentional misconduct, or reckless and grossly negligent conduct, which has adversely and materially affected the Partnership between Mohammed Hamed and Yusuf regarding the three Plaza supermarkets.
41. United was at the time of the formation of the Partnership, controlled by Yusuf, who, as the partner making such financial arrangements for the Partnership, committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under an agreement or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds -- which breaches the agreement and the duties due to the Partnership and his Partner.

Clearly these facts, if proven, would support the relief sought under Count II of the amended complaint. Indeed, defendants did not even address this count in their motion, conceding that it does adequately plead the relief being sought.

In short, Count I of the complaint sets forth an adequate factual basis for establishing a partnership, entitling the plaintiff to seek the available statutory relief. Count II then pleads a viable statutory cause of action under 26 V.I.C. § 121(5).

B. Count III - Constructive Trust, Unjust Enrichment and Alter Ego

Finally, Count III of the amended complaint seeks declaratory relief against United Corporation based on the theories of unjust enrichment, constructive trust and piercing the corporate veil. It seeks only the return of funds held in United's name which belong to or are due to the partnership, pleading as follows (after incorporating all prior pleadings into this Count by reference thereto):

43. United was at the time of the formation of the Partnership, controlled by Yusuf who, as the partner making such financial arrangements for the Partnership, committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under contract or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds -- which breaches the agreement and the duties due to the Partnership and his Partner.
44. The defendant United Corporation would violate its agency, violate Mohammad Hamed's contribution of its services to the Partnership, and be unjustly enriched if it did not distribute the 50% of the Partnership funds and 50% of the Partnership property belonging to the plaintiff, Mohammed Hamed.
45. Mohammad Hamed is entitled to declaratory relief finding that all funds belonging to the plaintiff held by United Corporation are held in either in the course of business as an agent, as Yusuf's alter ego or as a constructive trust for the plaintiff, which must be returned forthwith. United should also be equitably estopped from denying the obligation to provide such funds and property to plaintiff. In the alternative Mohammad Hamed is entitled to declaratory relief finding that an amount equal to 50% of the Partnership profits and property held in United for distribution to or for the benefit of Yusuf are owed to Hamed under the Partnership Agreement or pursuant to a constructive trust for Hamed.

Here, with regard to United, plaintiff is merely alleging exactly what Yusuf has already stated repeatedly -- the partners' original agreement was to carry out the purpose of the partnership agreement utilizing the corporation to do things for it.⁴ Yusuf and United's attorney made sure this point was clear in that deposition testimony. (**Exhibit 1** at p. 69:13-21) (emphasis added):

Q: Okay. Okay. You were asked by Attorney Adams, when it says United Corporation in this [other, unrelated] Joint Venture Agreement, **in talking about Plaza Extra, talking about the supermarket** on St. Thomas, who owned or who was partners in United Corporation **Plaza Extra** at the time before you entered into that Joint Venture Agreement?

A: **It's always, since 1984, Mohammed Hamed.**

Q: Okay. So when it says United Corporation --

⁴ Yusuf put it perfectly: "But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that **whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.**" See **Exhibit 1** at p. 23:18-25.

A: **It's really meant me and Mr. Mohammed Hamed.**

Indeed, such use by a partnership of the services of a corporation is in no way novel -- it happens.⁵ Moreover, defendants do not dispute in their memorandum that:

- A. United is in possession of these "profits of the supermarket operations";
- B. plaintiff is entitled to 50% of the "profits of the supermarket operations";
- C. removal of such profits from those United accounts (either as disbursements or to buy additional assets) have been on a closely tracked 50/50 basis;
- D. those profits have always been kept in segregated "supermarket operations only" bank and investment accounts by United⁶ -- requiring joint signatures and subject to joint access (defendants admit this but argue this does amount to control);
- E. United has transferred such funds and profits from these "segregated" "joint access" supermarket accounts to accounts that are not jointly accessible.

Defendants' own memorandum concedes that plaintiff is entitled to 50% of the profits -- and do not dispute that they are sitting in the segregated United accounts solely related to the Plaza Extra supermarket operations. Thus, it is difficult to understand why defendants do not think United is a proper defendant here.

⁵ See e.g. *Sheridan Healthcorp, Inc. v. Amko*, 993 So.2d 167, 170 (Fla.App. 4 Dist. 2008) ("The fact that joint adventurers may determine to carry out the purpose of the agreement through the medium of a corporation does not change the essential nature of the relationship"); *McDonald v. McDonald*, 53 Wis.2d 371, 380, 192 N.W.2d 903, 908 (Wis. 1972) ("We find no basis for applying the doctrine of estoppel or laches. There was nothing inconsistent in the action of Chester, Jr., in partaking of the activities of the corporation over the years which would now foreclose him from asserting the corporation was an instrumentality by which the partnership carried on part of its business."); see also *Granik v. Perry*, 418 F.2d 832, 836 (C.A.Fla. 1969) ("The fact that joint adventurers may determine to carry out the purpose of the agreement through the medium of a corporation does not change the essential nature of the relationship"); *Jolin v. Oster*, 44 Wis.2d 623, 172 N.W.2d 12 (1969) (corporation was vehicle for conducting the business of a partnership or joint venture).

⁶ Defendants concede "[s]ince its inception, Defendant United has always maintained *separate bank accounts* to collect rents and other incomes unrelated to its supermarket operations." (DE 29 at p. 4) (Emphasis added.)

In any event, Count III sets forth the elements of the cause of action being sought—piercing the corporate veil, a constructive trust or finding of unjust enrichment—and the facts pled in the complaint, as incorporated by reference into Count III are sufficient to support the relief sought if those facts are proven. Thus, the Rule 12(b)(6) motion as to Count III should be denied as well.

C. Defendants' Remaining Factual Arguments and Defenses

Defendants failed to address the three counts in the amended complaint under the appropriate Rule 12(b)(6) procedure, as set forth in *Watts*. Instead, defendants argue multiple (mostly factual) defenses to these well-pleaded allegations. Such factual arguments and attempted legal defenses are wholly inappropriate for a Rule 12(b)(6) motion, which accepts all well-pleaded facts as true. The plaintiff will briefly address these points to show why they are not relevant here.

For example, United and Yusuf repeatedly state that there is no written formalization of this partnership. However, they concede that under the UPA, a partnership agreement need not be in writing. In fact, while irrelevant to this motion, Yusuf explained in his 2000 deposition *why* there was no writing (**Exhibit 1** at pp. 23:18-24:1, 4-5) (emphasis added):

But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.

But due to my honesty . . . my partner, he never have it in writing from me.

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In any event, one need not have any written agreement, tax returns or other documentation before being able to plead a claim for relief that a partnership exists between the parties.

Defendants also argue that the plaintiff's claim is somehow inconsistent with what has transpired in the criminal case tax case against defendants, so that the amended complaint is somehow subject to dismissal under Rule 12(b)(6). However, the doctrines of "issue preclusion," "judicial estoppel" and "estoppel" are all affirmative defenses that are not a proper basis for challenging the sufficiency of the pleadings. They go to the merits of the claim, not whether a claim was properly pled. Moreover, even if they were proper defenses to be considered at this point, they can be summarily rejected **as the plaintiff was not a defendant in that criminal case, so he cannot be bound by what transpired in those proceedings.**

Defendants also argue that the affirmative defense of *statute of frauds* bars this claim. Again, this is an affirmative defense, and as such, does not go to the sufficiency of the pleadings in the amended complaint. Indeed, it is black letter law that the statute of frauds does not apply to the oral formation of a partnership, which the defendants conceded in another section of their motion, acknowledging that a partnership need not be in writing. In fact, "[p]artnerships and joint ventures without fixed terms are deemed to be 'at will' subject to dissolution by either partner at any time. Therefore, such agreements are not within the Statute of Frauds." *Smith v. Robson*, 2001 WL 1464773, 3 (Terr.Ct. 2001).⁷ Therefore, this affirmative defense does not warrant relief under Rule 12(b)(3) either.

⁷ Moreover, the Statute of Frauds defense is unavailable where one party has fully performed under a contract. *Id.* citing *Birnbaum v. Zenda*, 15 V.I. 329 (Terr.Ct.1978).

In short, while defendants' arguments might be appropriate in a Rule 56 summary judgment motion, they do not warrant relief under Rule 12(b)(6), which only addresses the sufficiency of the pleadings, not the merits of the case.

D. Summary

In summary, the plaintiff's amended complaint meets the pleading requirements of the federal rules, so that defendants' Rule 12(b)(6) motion should be denied.

III. Motion for More Definite Statement

Defendants argue alternatively, under Rule 12(e), that the plaintiff should be required to file a second amended complaint to address certain alleged deficiencies in the amended complaint. For the reasons noted in the preceding section, the plaintiff believes the amended complaint meets the required pleading standards, so this aspect of defendants' Rule 12 motion should be denied as well. However, if the Court believes more specific language is needed, then the plaintiff requests leave to amend to address any such deficiencies as determined by the Court, as requested by the defendant and, more importantly, as counseled in *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1954 (2009), *Fowler v. UPMC Corporation*, 578 F.3d 203, 212 n.6 (3rd Cir. 2009).

IV. Motion to Strike

Finally, defendants move, pursuant to Rule 12(f), to strike certain attachments to the plaintiffs pleadings, arguing these are "settlement discussions" that are excludable under Rule 408. Rule 12(f) provides that a Court "may strike from a pleading an

Likewise, "part performance often takes a case out of the Statue of Frauds because it would be inequitable to allow a party to invest time and labor upon the faith of a contract that did not exist." *Id.* citing *Henderson v. Resevic*, 6 V.I. 196 (D.V.I.1967). In any event, this defense is premature at this juncture.

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insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." As noted in 5C, *Wright & Miller, Federal Practice and Procedure* (3rd 2004) §1382:

The district court possesses considerable discretion in disposing of a Rule 12(f) motion to strike redundant, impertinent, immaterial, or scandalous matter. However, because federal judges have made it clear, in numerous opinions they have rendered in many substantive contexts, that **Rule 12(f) motions to strike on any of these grounds are not favored**, often being considered purely cosmetic or "time wasters" there appears to be general judicial agreement, as reflected in the extensive case law on the subject, that they should be denied unless the challenged allegations have no possible relation or logical connection to the subject matter of the controversy. *Id.* at 435 – 436 (footnotes omitted).

It normally is apparent on the face of the pleading whether the challenged matter is objectionable under Rule 12(f)...Consequently, Rule 12(f) motions can and should be adjudicated with relative dispatch. **The district court also should also refrain from becoming enmeshed in the merits of the action.** . . . *Id.* at 452. (Emphasis added.)

Moreover, that section also notes as follows:

Any doubt about whether the challenged material is redundant, immaterial, impertinent, or scandalous should be resolved in favor of the non-moving party. (footnotes omitted)(citing *Sawo v Drury Hotels Co., LLC*, 2011 WL 3611400 (D. Kan. 2011) and *Lane v Endurance American Specialty Ins. Co.*, 2011 WL 1343201 (W.D. N.C. 2011). *Id.* (Supp. 2012) at p. 96.

Defendants do not make it clear which provision of Rule 12(f) they rely upon, as they instead go to the *Federal Rules of Evidence* to support their contention that certain exhibits attached to the complaint are settlement discussions barred by Rule 408. This Rule 12(f) motion should be denied for two separate and independent reasons.

First, it is premature to make such an evidentiary ruling at this stage of the pleadings. *See, e.g., Donovan v. Quade*, 830 F.Supp.2d 460, 470-471 (N.D.Ill. 2011) (Rule 408 does not exclude evidence related to negotiations that show intent or knowledge). Indeed, at page 6 of defendants' memorandum, they reference another letter in this chain of correspondence, so that they cannot now be heard to protest about the other letters in the chain. Once a party attempting to exclude settlement evidence

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has put one letter in such a chain before the Court, the others should be allowed. See *e.g. Evans v. Covington*, 795 S.W.2d 806, 809 (Tex. App. 1990) ("One may not complain of improper evidence produced by the other side when he has introduced the same evidence or evidence of a similar character"). In short, this issue is not a proper one a Rule 12(f) motion to strike, as it premature to make such an evidentiary ruling at this early stage of the pleadings. Moreover, as the response to the defendants' Rule 12 motion does not rely upon any of these documents, this objection need not be addressed now.

Second, these referenced documents are not "settlement exchanges," as asserted by defendants. The documents reveal that one partner gave notice of dissolution to another partner. Such notice is not a settlement negotiation -- it is a statement of fact. For example, the relevant portions of the February 10, 2012 email (D.E. 15-2) are the heading "II Dissolution of Partnership (Yusuf & Hamed)":

I will be sending a **formal notice of partnership dissolution notice**, with a list of to-dos that will be **required** to complete an orderly dissolution. (Emphasis added.)

This supports the plaintiff's factual assertion that **notice** of dissolution was given by Yusuf's lawyer to Hamed, and that a formal, written version would follow. The follow up dissolution notice (D.E. 15-2) then factually described the assets:

As it stands, the partnership has three major assets: Plaza Extra - West (Grove Place, including the real property), Plaza Extra - East (Sion Farm) and Plaza Extra (Tutu Park, St. Thomas).

Indeed, these documents were sent to Hamed (not any lawyer) and did not contain any language indicating that they were being sent for settlement purposes. The same is true of the statements in the draft dissolution agreement subsequently sent by Attorney DeWood, which again identified these three stores as being partnership assets, and which also included these "Whereas" clauses (DE 15-3):

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WHEREAS, the Partners have operated the Partnership under an **oral** partnership Agreement since 1986. (Emphasis in original)

WHEREAS, the Partnership was formed for the purposes of operating Super Markets in the District of St. Croix, and St. Thomas; and

WHEREAS, the Partners have shared profits, losses, deductions, credits, and cash of the Partnership;

Thus, these statements of fact, as communicated by defendants' counsel, should not be stricken under the argument that they were only made for settlement purpose. None of the quoted language attempts to compromise or settle anything. That language was part of a unilateral notice intended to commence the **dissolution of the partnership**.

In summary, it is premature to address this issue now, particularly since these the relevant sections relied upon (and quoted) by the plaintiff in the amended complaint do not appear on their face to be settlement communications.

V. Conclusion

For the reason set forth herein, it is respectfully submitted that Defendants' Rule 12 motion to dismiss should be denied in all respects.

Dated: November 12, 2012

/s/Joel H. Holt, Esq.

Joel H. Holt, Esq.

Counsel for Plaintiff

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Dated: November 12, 2012

/s/Carl J. Hartmann, III, Esq.

Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

5000 Estate Coakley Bay, L-6

Christiansted, VI 00820

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CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of November, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl. 2006
Miami, FL 33131

Nizar A. DeWood
The Dewood Law Firm
Eastern Suburb, Suite 101
Christiansted, VI 00820

/s/Joel H. Holt, Esq.

Exhibit 1

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

AHMAD IDHEILEH,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 156/1997
)	
UNITED CORPORATION and)	
FATHI YUSUF, Individually,)	
)	
Defendants.)	

THE ORAL DEPOSITION OF FATHI YUSUF
was taken on the 2nd day of February 2000, at the Offices of
Caribbean Scribes, 2132 Company St., Ste. 3, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
1:05 p.m. and 4:05 p.m. pursuant to Notice and Federal Rules
of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

Cheryl L. Haase
(340) 773-8161

COPY
EXHIBIT
1
Bulmer No. 5008

FATHI YUSUF -- DIRECT

1 A. I personally own 50 percent of Plaza Extra in
2 1986. I own United Shopping Plaza. I'm a member of
3 United Corporation, who owns United Shopping Plaza. I build
4 that store, I was struggling for a loan. The whole island
5 know what I went through. I said I'm going to build this
6 building no matter what, and hold the supermarket for my
7 personal use.

8 It took me three years. I give an offer to
9 two nephew of mine and my brother-in-law, Mr. Hamed, if they
10 would like to join me in building up this store together, and
11 we should not have any problem, if I finish build up the
12 building, we should have no problem whatsoever to go to the
13 bank and the bank will grant us the loan to operate the
14 supermarket. Okay?

15 During construction -- I'm going to go a
16 little bit back to tell you what is my background. During
17 construction, I was struggling for loan. And at that time
18 Banco Popular, I remember, came into the Virgin Islands and
19 took over the majority of interest of First National
20 Citibank. They buy all their customers, and they was very
21 hungry to do business in the island because they have
22 expenses to face and they like to issue loan as fast as
23 possible to cover their expenses.

24 Excuse me. Can I have water please if you
25 don't mind?

FATHI YUSUF -- DIRECT

1 So I left Nova Scotia, struggling, left them
2 not to get a loan, but did not close my account. I struggle
3 all over looking to get a loan. I went to all local banks at
4 that time, and everybody says, I'm sorry, we can't help you.
5 So I find it is a golden opportunity for me to go to Banco
6 Popular.

7 So I went to the manager there, I explained to
8 him my story what Scotia did to me and so he say, I will come
9 to the site.

10 When he come to the site where I'm building,
11 he says, How you going to put this building together?
12 Where's your plan? I show it to him. It's almost zero, the
13 specification. Just numbers for me, columns, but the column
14 doesn't say what thick, what wide. It just give me the
15 height.

16 So the bank, he says, Mr. Yusuf, I'm sorry.
17 We don't do business that way. We have to have somebody
18 professional plan with full specification. I could see your
19 plan approved, I could see the steel here, but it's -- you
20 don't have the proper material or record to take to my board
21 of director to approve a loan in the millions.

22 So I understood. My answer to that gentleman
23 was, unfortunate because of my financial situation, I have to
24 choose this route. But I promise you, as a man, I will put
25 that building together. The man told me at that time, I

1 he gave me about 275,000, and to be 25 percent each,
2 25 percent for my sister son, 25 percent for my brother son,
3 25 percent for me.

4 But before I continue, I'm going to -- I would
5 like to go back a little bit more to clear something. When I
6 was in the financial difficulty, when I was in financial
7 difficulty, my brother-in-law, he knew. I shouldn't -- he
8 start to bring me money. Okay? He own a grocery, Mohammed
9 Hamed, while I was building, and he have some cash. He knew
10 I'm tight.

11 He start to bring me money. Bring me I think
12 5,000, 10,000. I took it. After that I say, Look, we
13 family, we want to stay family. I can't take no money from
14 you because I don't see how I could pay you back. So he
15 insisted, Take the money. If you can afford to, maybe pay
16 me. And if you can't, forget about it. Okay. He kept
17 giving me. I tell him, Under this condition I will take it.
18 I will take it.

19 He kept giving me until \$200,000. Every
20 dollar he make profit, he give it to me. He win the lottery
21 twice, he gave it to me. All right? That time the man have
22 a little grocery, they call Estate Carlton Grocery. Very
23 small, less than 1,000 square foot, but he was a very hard
24 worker with his children. And it was, you know, just like a
25 convenience mom-and-pop stores. He was covering expenses and

1 saving money.

2 I say, Brother-in-law, you want to be a
3 partner too? He said, Why not? You know, as a family, we
4 sit down. Says, How much more can you raise? Say, I could
5 raise 200,000 more. I said, Okay. Sell your grocery. I'll
6 take the two hundred, four hundred. You will become
7 25 percent partner.

8 So we end up I'm 25 percent, my two nephew 25
9 each, and my brother-in-law, Mohammed Hamed, 25 percent. I
10 don't recall the year, could be '83 or '84, but at least
11 thanks God in the year that Sunshine Supermarket opened,
12 because his supermarket is the one who carries these two
13 young men and my brother to go into the supermarket with me.
14 So I have their money, I finish the building.

15 We call the refrigeration manufacturer, not to
16 waste time. We book an order for our refrigeration, and we
17 committed to it. And from their money I have paid \$100,000
18 deposit on the equipment. I was so sure the gentleman at
19 Banco Popular, he promised me, you know. Everything were
20 look to go me encouraging. And especially at that time I'm
21 sure anybody in St. Croix in the past twenty, thirty years,
22 he knew that that building will never go up. Only maybe six
23 people in St. Croix at that time says I might be able to put
24 it up. But 99.9 of St. Croix resident, they were looking at
25 me as a fool.

1 man and he look at me, he underestimate. It came to an
2 extent, I tell him, Look, sir. I respect your profession.
3 You're the bank manager. I respect that. And I want you to
4 respect my profession. I'm a retailer. Everybody have a way
5 of making a living. Oh, I been denied.

6 Then, but when I been denied, I have to tell
7 my partner what's going on. I been entrusted to handle the
8 job perfect, and I am obligated to report to my partner to
9 anything that happened. I told my nephews and I told my
10 partner, Hey, I can't get a loan, but I'm not giving up.

11 So two, three days later my two nephews split,
12 say, We don't want to be with you no more, and we want our
13 money. I say I don't have no money to pay you. The money's
14 there, but if you want to leave because I default, you free
15 to leave.

16 How we going to get paid?

17 I says, Shopping center is 50 percent owned by
18 you uncle and 50 percent by me. I have to feed my children
19 first, and whatever left over, I'll be more than happy to
20 give it to you. Okay. What do you want us -- what do you
21 want to pay us for rent of our money?

22 We come to an agreement, I pay them 12 percent
23 on their money, and 150,000 default because I don't fulfill
24 my commitment. I accepted that. We wait until my partner,
25 which is my brother, came. He's an older man. And we came

1 up to Mr. Mohammed Hamed, I say, You want to follow them? He
2 say, Yeah, I will follow them, but do you have any money to
3 give? I say, Look, Mr. Hamed, you know I don't have no
4 money. It's in the building, and I put down payment in the
5 refrigeration. But if you want to follow them, if you don't
6 feel I'm doing the best I can, if you want to follow them,
7 you're free to follow them. I'll pay you the same penalty,
8 75,000. I will give you 12 percent on your 400,000.

9 He says, Hey. If you don't have no money,
10 it's no use for me to split. I'm going to stay with you.
11 All right. I say, Okay. You want to stay with me, fine. I
12 am with you, I am willing to mortgage whatever the
13 corporation own. Corporation owned by me and my wife at that
14 time.

15 Q. Uh-huh.

16 A. And my partner only put in \$400,000. That's all
17 he put in, and he will own the supermarket. I have no
18 problem. I told my partner, Look, I'll take you under one
19 condition. We will work on this, and I'm obligated to be
20 your partner as long as you want me to be your partner until
21 we lose \$800,000. If I lose 400,000 to match your 400,000, I
22 have all the right to tell you, Hey, we split, and I don't
23 owe you nothing.

24 They say, Mr. Yusuf, we knows each other. I
25 trust you. I keep going. Okay. Now, I told him about the

1 two partner left, Mr. Hamed. You know, these two guys, they
2 left, my two nephew, they was your partner and my partner. I
3 give you a choice. If you pay penalty with me and pay the
4 interest with me, whatever they left is for me and you. But
5 if I must pay them the one-fifty penalty and pay them
6 12 percent, then Plaza Extra Supermarket will stay
7 three-quarter for Yusuf and only one-quarter for you.

8 He says, Do whatever you think is right. I
9 tell him, You want my advice? I be honest with you. You
10 better off take 50 percent. So he took the 50 percent.

11 Q. Not to cut you short, Mr. Yusuf, but we have to
12 play with time, and I appreciate the history as far as
13 Plaza Extra St. Croix and United Corporation, but I want to
14 focus primarily right now on your relationship with
15 Mr. Idheileh.

16 There came a time that the two of you entered
17 into talks about Plaza Extra on St. Thomas?

18 A. May I interrupt you, sir? I cannot build a roof
19 before a foundation. The problem is you ask me who I am,
20 where I come from. I am explaining myself. I want to show
21 to you and the court that Mohammed Hamed is way before
22 Plaza Extra was opened with me, he was my partner. And
23 Mr. Idheileh, he himself knows, because the money he lend me
24 when I open up Plaza Extra, he was getting paid from Wally.

25 I'm a person, if I run a business, I want to

1 stay clean. You know what I mean, clean? I'm the final
2 decision man. I don't give that to anybody. Excuse me. But
3 when it come to money, I don't touch.

4 When I open up Plaza Extra Supermarket, who
5 was in charge of the money at that time is Wally Hamed. When
6 this gentleman, Mr. Idheileh, lend me his money as a friend,
7 I have never signed for him. Who paid him? I never pay him
8 back. My partner's son is the one who pay him back. And he
9 knew, because he come to my office once or twice a week. And
10 he's not the only one knew. Every single Arab in the Virgin
11 Islands knew that Mr. Mohammed Hamed is my partner, way
12 before Plaza Extra was opened.

13 Now, should I ask him or continue?

14 MS. VAZZANA: He's ready to give you a next
15 question.

16 Q. (Mr. Adams) My question to you, sir, is there
17 came a point in time that you and Idheileh started to, or
18 started to have some discussions about Plaza Extra on
19 St. Thomas, is that correct?

20 A. Repeat the question please.

21 Q. There came a point in time that you and
22 plaintiff, Mr. Idheileh, entered into negotiation about a
23 partnership, entering into a partnership with Plaza Extra on
24 St. Thomas, is that correct?

25 A. I can answer that if I could explain it.

1 MR. ADAMS: Let the record indicate I'm
2 showing Mr. Yusuf a copy of the Joint Venture Agreement.

3 A. I sees Mr. Idheileh and myself and Notary Public,
4 and I believe it's a witness underneath. I don't know.

5 Q. (Mr. Adams) Now --

6 A. Notary Public someplace else, and the same
7 witness, and my signature repeated again on a different page.
8 My son. Yeah, my son is the president of United Corporation.

9 Q. Now, sir, the Joint Venture Agreement is between
10 whom?

11 A. Between -- if you have to look at it this way, --

12 Q. No, no, I'm looking --

13 A. -- between me, my partner and him.

14 Q. No, Mr. Yusuf. Let us look at the Joint Venture
15 Agreement that was signed.

16 A. Yeah, I seen it. United Corporation.

17 Q. Thank you.

18 A. But I want you please to be aware that my
19 partner's with me since 1984, and up to now his name is not
20 in my corporation. And that -- excuse me -- and that prove
21 my honesty. Because if I was not honest, my brother-in-law
22 will not let me control his 50 percent. And I know very
23 well, my wife knows, my children knows, that whatever
24 Plaza Extra owns in assets, in receivable or payable, we have
25 a 50 percent partner.

1 But due to my honesty --

2 Q. Now --

3 A. Excuse me. I want to clear who I am.

4 -- my partner, he have never have it in
5 writing from me.

6 Q. Mr. Yusuf --

7 MS. VAZZANA: Okay. The question was the
8 question was simple: Who it says the Joint Venture Agreement
9 is between.

10 THE WITNESS: Actually, between
11 United Corporation and Mr. Ahmad Idheileh.

12 Q. (Mr. Adams) Is there anywhere in that Joint
13 Venture Agreement does the name Mr. Mohammed Hamed --

14 MS. VAZZANA: Hamed.

15 Q. -- appear anywhere in that joint venture?

16 A. No.

17 Q. Is United Corporation the owner of Plaza Extra
18 St. Croix?

19 A. Yes.

20 Q. Is Mr. Hamed an officer of United Corporation?

21 A. Who?

22 Q. Mohammed Hamed.

23 A. No, he's not an officer.

24 Q. He's not an officer of United Corporation?

25 A. No.

Cheryl L. Haase

1 convince my partner's son, Look, we got \$6 million in this
2 store. This man, we come to an agreement --

3 Q. We're talking about Sea-Mart.

4 A. Okay.

5 Q. So in Sea-Mart, when you negotiated that
6 transaction that Mr. Idheilleh would be able to be out of
7 Sea-Mart, --

8 A. Yes.

9 Q. -- was that based upon the books or just on a
10 hand shake?

11 A. There was no book whatsoever. Based on their
12 conversation.

13 Q. Okay. Okay. You were asked by Attorney Adams,
14 when it says United Corporation in this Joint Venture
15 Agreement, in talking about Plaza Extra, talking about the
16 supermarket on St. Thomas, who owned or who was partners in
17 United Corporation Plaza Extra at the time before you entered
18 into that Joint Venture Agreement?

19 A. It's always, since 1984, Mohammed Hamed.

20 Q. Okay. So when it says United Corporation --

21 A. It's really meant me and Mr. Mohammed Hamed.

22 Q. Okay.

23 A. Mr. Idheilleh is well aware of that.

24 Q. Okay. Well, we're talking now Plaza Extra
25 St. Thomas. Who was responsible for hiring employees?