

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

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

CIVIL NO. SX-12-CV-370

**DEFENDANTS' EMERGENCY MOTION TO STAY
PRELIMINARY INJUNCTION ORDER**

COMES NOW Defendants by and through undersigned counsel hereby move this Court to enter an order staying further proceedings in this Court pending resolution of Defendants' appeal to the Virgin Islands Supreme Court of the this Court's Order the granting of Plaintiff's motion for a preliminary injunction. In support of this motion, the Defendants state as follows:

I. Introduction

A stay must immediately be entered. The Court's Order has stripped United Corporation of virtually all its assets and its income stream, and devolved the assets and income stream to a disputed, at-will, oral partnership which has been terminated. The Court's Order has left United Corporation with all of its liabilities, while at the same time turning United Corporation's secured creditors into unsecured creditors because every contract, security agreement, and UCC financing statement, lists United Corporation as the debtor. The Court's Order has rendered United Corporation insolvent and has left the secured and unsecured creditors flapping in the wind. Finally, the Court's Order has turned the status quo on its head and pierced the corporate veil when the Plaintiff did not plead it, the Plaintiff did not requested it, and the Plaintiff did not put into the record any evidence supporting such relief.

The Plaintiff claimed that the Defendants have crossed the Rubicon, but the Court's Order has brought the Rubicon's deluge to United Corporation. A stay must be entered *instante*.

II. Procedural History

On April 30, 2013, this Court entered an order granting Plaintiff's motion for a preliminary injunction finding, *inter alia*, that the Plaintiff had demonstrated that there was an at-will partnership between Fathi Yusuf and the Plaintiff. The Court also found that the at-will partnership had been terminated by Fathi Yusuf it nevertheless compelled the continuation of the partnership.

III. Basis for Request for Emergency Relief

Defendants' instant motion should be treated as an emergency motion because the relief provided to the Plaintiff in the Court's April 30th order drastically changes the status quo and threatens the very existence of the Plaza Extra Supermarkets, and at the same time compromises United Corporation as a *de jure* entity. Indeed, the way the Court has structured its order, in the event that a Hamed family member and a Yusuf family member cannot agree on any detail (no matter how small), no action can be taken because the order precludes any "unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations." The Court has engineered an untenable situation which will eventually cause the stores to grind to a halt as the order has removed Fahti Yusuf as the authority who has, since the opening of the stores, had the final decision making power.¹

Moreover, and more importantly, the Court's finding that there is a terminated at-will partnership, while at the same time requiring the terminated partnership to continue, is directly at odds with forcing the purported partners to coexist on an on-going basis—once the partnership is

¹ The Plaintiff and each of his sons testified that in the event there was a dispute between a Hamed manager and a Yusuf manager the dispute would be resolved by Fahti Yusuf alone. Jan. 25, 2013 Hr'g Tr. at 105:12-15; 201:4; 210:22-23.

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terminated the only remedy is dissolution. The Court's ruling has forced these disputed at will partners into a partnership for an indefinite term long after the alleged partnership was terminated according to the Court's findings. These practical problems require this Court to address this motion on an emergency basis.

IV. Standard for Motion to Stay

“Requests for a stay of judgment or order of the Superior Court pending appeal, . . . , or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal in a civil case must ordinarily be made in the first instance to the Superior Court.” V.I. Supreme Ct. R. 8(b). In considering a motion for stay pending an appeal, the Court should consider the following factors: (1) whether the movant is likely to prevail on the merits on appeal; (2) whether the movant will be irreparably injured absent a stay; (3) whether the adverse party will suffer substantial harm from the issuance of the stay; and (4) whether a stay will serve the public interest. *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

The Eleventh Circuit Court of Appeals has stated that “[o]rdinarily the first factor is the most important . . . [b]ut the movant may also have his motion granted upon a lesser showing of a ‘substantial case on the merits’ when the ‘the balance of the equities [identified in factors 2, 3, and 4] weighs heavily in favor of granting the stay.” *Garcia-Mir*, 781 F.2d at 1453 (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981) (per curiam), cert. denied, 460 U.S. 1042 (1983)); see also *Devcon Corp. v. Woodhill Chern. Sales Corp.*, 455 F.3d 830, 832 (5th Cir. 1980) (granting stay of preliminary injunction where plaintiff did not establish that it would suffer irreparable harm “during the relatively short interval in which the case was being tried.”)

Moreover, where, absent a stay, the appeal is effectively mooted, a stay pending appeal is warranted based on the irreparable harm to the movant. See *Providence Journal Co. v. FBI*, 595 F.2d 889

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(1st Cir. 1979) (granting stay where failure to grant stay would “utterly destroy status quo” and thus appellant’s right to meaningful appellate review).

A. The Equities Strongly Favor Granting the Stay

The equities in this case substantially weigh in favor of granting the stay. *Garcia-Mir*, 781 F.2d at 1453. This is, in large part, because the relief granted in the Injunction Order compels the alleged partners to continue a terminated at-will partnership when the relief is based on a limited record and runs contrary to the evidence introduced into the record. Further, as shown in the Defendant’s motion for clarification, the Court’s Order is unworkable. Indeed, the very evil that the Plaintiff claimed in his moving papers, i.e., that the stores’ operations would be compromised, has resulted in the Court changing the status quo so that now every decision needs to be made with joint authorization, which, in turn, has compromised the business’ ability to run as a going concern. The Court’s Order will result in a deadlock with no manner for a tie-breaker to be enforced.

If the Defendants are forced to comply with the Injunction Order and allow the Plaintiff and his children to have equal management rights and de facto veto power over any business decision, regardless of how the Virgin Islands Supreme Court rules on the appeal, the harm will be done. Indeed, two of the Plaintiff’s adult sons (Wally Hamed and Mafi Hamed) have acted in concert to steal \$460,000.00 from a *de jure* entity owned by members of the Hamed and Yusuf family. *See Yusuf Yusuf, derivatively on behalf of Plessen Enterprises, Inc., v. Waleed Hamed, Wabeed Hamed, Mufeed Hamed, Hisham Hamed, and Five-H Holdings, Inc., and Plessen Enterprises, Inc.*, case no. SX-13-CV-120, a copy of the verified complaint with exhibits is attached hereto as Exhibit A. There can be no dispute to the theft of funds as \$230,000.00 was deposited with the Clerk of the Court mere days after the *Plessen* complaint was filed, a copy of which is attached hereto as Exhibit B. Having two employees, who have demonstrated such a proclivity for outright theft, continue to be present in the stores on a daily

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basis is not only an indisputably poor employment decision, it is also allows the proverbial “fox in hen house.” The Order must not be allowed to remain in effect.

In comparison, if the stay is granted (the Plaintiff testified that he would agree with “[w]hatever” management decisions Fathi Yusuf ever made, including the decision that Mohammad Hamed and Mohammad Hamed’s sons were mere “employees” “like any [other] employees”, Jan. 25, 2013 Hr’g Tr. at 201:21-24), it will only be delayed for an additional, relatively short, period of time until the appeal is resolved. In comparison, if the stay is not granted, even if the Virgin Islands Supreme Court reverses the Injunction Order, the Defendants will have suffered irreparable injury to not only to the day-to-day operations of the stores, but to the goodwill and continued viability of United Corporation as a going-concern.

1. Defendants Have Shown a Likelihood of Success on the Merits

The Third Circuit has stated in no uncertain terms that: “when the preliminary injunction is directed not merely at preserving the status quo but, as in this case, *at providing mandatory relief, the burden on the moving party is particularly heavy.*” *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980) (emphasis added).

The Court’s Order provided mandatory relief, *viz.* (i) Hamed and a Yusuf signature be on every check from all Plaza Extra Supermarket operating accounts; (ii) “no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s))”; (iii) “the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operation.”

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However, the testimony of the Plaintiff was clear when he admitted that he never worked in any management capacity at any of the Plaza Extra Stores, which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf “*is in charge for everybody*” and everything. Jan. 25, 2013 Hr’g Tr. at 201:4 (reflecting Mohammad Hamed’s concession, even during his direct testimony, that “*Mr. Yusuf he is in charge for everybody*”), 201:23-24, 210:21-23 (acknowledging again that Fathi Yusuf is in “charge” of “all the three store[s]”) (emphasis added). In addition, as noted above, the Court’s order makes no provision for the resolution of disputes (as has been the case “throughout the years prior” to this action) by removing Fahti Yusuf’s from his supervisory role at the stores. The Court’s Order has provided mandatory relief that, under the record before this Court, cannot be justified as the Plaintiff has not carried his particularly heavy burden. For this reason alone, and of course in combination with the reasons provided below, the Court should grant the instant motion. to enter a stay *instanter*.

i. Damages Case

The Defendants have shown that this case is nothing more than a damages case, and since “[t]he requisite injury must be more than merely serious or substantial, and it must be of a peculiar nature, so that money cannot atone for it.” *McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d 518, 521 (D.V.I. 1999) (internal citation omitted). The record evidence shows that this commercial dispute concerns only money. Plaintiff’s self-appointed “agent,” Waleed Hamed, conceded as much, acknowledging that the lawsuit was filed to seek the return of monies. Jan. 25, 2013 Hr’g Tr. at 66:13-25. Although Plaintiff complains about the alleged “diversion” of \$2.7 million dollars from United Corporation d/b/a Plaza Extra’s accounts and alleged improper “removal” of other such funds for legal fees, etc., which are all disputed factual issues, the foregoing such complaints make it clear that “a preliminary injunction should not [have] be[en] granted [when] the injury suffered can

be recouped in monetary damages.” *IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007) (citing *Frank's GMC Truck Center, Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988) (“[A] purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement”)).

Similarly, the feigned fears of the Plaintiff regarding goodwill, customers and reputation are unsupported by the record evidence, which cannot be disputed, as the supermarket stores were, prior to the entry of the Court’s Order, operating normally and Plaintiff otherwise has failed to credibly support those fears, as required, *McBean*, 52 F. Supp. 2d at 521; and which, at best, are simply “remote future injur[ies]” that do not constitute potential irreparable harm for preliminary injunction purposes, *Barclays*, 938 F. Supp. at 310. In addition, the Third Circuit has made clear that injuries such loss of goodwill, consumers and reputation are “limited to ‘the special problem of [consumer] confusion that exists in cases involving trademark infringement and unfair competition.’” *IDT*, 250 Fed. Appx. at 479 (citing *Acierno*, 40 F.3d at 653-54). “As the harm claimed by [Plaintiff here] is not analogous to the harm caused by consumer confusion, the line of cases recognizing loss of goodwill or reputation as irreparable harm is not applicable.” *Id.*

ii. There is No Enforceable “Partnership” Agreement

a. Statute of Frauds

The Court acknowledged that the term of the alleged partnership agreement was “forever.” Memo. Op. at p. 5, ¶13. In this context, where an unwritten agreement purports to provide a stated term of greater than one year, the Second Circuit Court of Appeals has clarified that:

Despite some sweeping pronouncements to the effect that the New York statute of frauds [] does not apply to joint ventures, these must mean only that a writing is not required simply because the transaction is a joint venture, and the statute must apply to joint ventures having a stated term of more than one year, as the plain language of [the statute] dictates. We perceive no difference relevant for the purpose of the statute of frauds between joint ventures for a stated term and partnerships for a

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stated term. The statements that the New York statute of frauds does not apply to joint ventures doubtless arise from the fact that joint ventures are usually not for a stated term but for a stated purpose, and the implicit assumption that, however unlikely, this purpose could be achieved within one year.

Ebker v. Tan Jay Int'l, Ltd., 739 F.2d 812, 827 (2d Cir. 1984) (internal citation omitted).

On appeal, the Second Circuit found that “the statute of frauds renders unenforceable the oral joint venture agreement containing a stated term of [greater than one year] as found by the jury.” *Id.* at 828 (rejecting the argument that the “Statute of Frauds did not apply to joint ventures at all” and alternative argument that, even “if the statute applied, the five-year joint venture agreement would be treated as a partnership at will”).

Here, as this Court found the alleged partnership to last “forever,” the statute of frauds renders the agreement unenforceable which should dispose of this action as a matter of law. *Ebkar*, 739 F.2d at 828. *See also Fountain Valley Corp. v. Wells*, 98 F.R.D. 679, 683-65 (D.V.I. 1983) (holding that, under Virgin Islands law, “statute of frauds . . . bar[s] this Court from enforcing any alleged joint venture agreement” that “was to exist for more than one year”).

b. Statute of Limitations

Mohammed Hamed’s purported Agent Waleed Hamed testified that he has a power of attorney that the Plaintiff executed in either 1995 or 1996. Jan. 25, 2013 Hr’g Tr. at 46:1-5. Waleed Hamed also testified that he was aware in either 1999 or 2000 that Fathi Yusuf’s ownership interest was devolved to his children. Jan. 25, 2013 Hr’g Tr. at 134:1-9.

It is black letter law that notice to the agent (i.e., the BIR) is notice to the principal (i.e., the Service). Restatement (Second) of Agency, § 275. Accordingly, as late as 2000 Plaintiff was aware that Fathi Yusuf had divested his ownership interests to his children. And because the instant case was brought at least 11 ½ years after Mohammed Hamed was aware of the divestment it clearly is prohibited by the statute of limitations.

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The longest statute of limitations in the Virgin Islands is 20 years, but that applies only for actions to recover real property, upon a judgment, and upon a sealed instrument. 5 V.I.C. § 31. All other applicable statutes are 10 years or less. So, no matter how the Plaintiff attempts to style his cause of action, since it clearly does not fall within the three actions that have a 20 year period, this case is barred by the statute of limitations. Thus, the Defendant has demonstrated a more than reasonable likelihood of success on appeal.

c. Retirement of Mohammed Hamed

The Defendants have also established a likelihood success on the merits of their position that, assuming *arguendo*, there was a partnership, because “[w]hen a partner retires . . . , the partnership is dissolved.” *Estate of Matteson v. Matteson*, 749 N.W.2d 557, 568 (Wis. 2008) (applying Wisconsin Uniform Partnership Act provisions) (citation omitted). “An existing partner has two primary options upon initiating a partnership dissolution[:] . . . (1) (continuation) to permit the business to continue and claim his or her interest in the dissolution value as a *creditor*, or (2) (wind-up) to force the dissolved business to wind up and take his or her part of the proceeds.” *Id.* (citation omitted) (emphasis added). Upon election of a continuation, when the remaining partner ultimately ends and dissolves the business, the retiring/exiting partner receives his elected sum of the partnership’s dissolution value “as an *ordinary creditor*,’ with creditors of the dissolved partnership having priority over an exiting partner’s claims.” *Id.* at 572-73 (citing Wis. Stat. § 178.37) (emphasis added).

Here, the Court found that the Plaintiff “retired from the day-to-day operation of the supermarket business in about 1996.” Memo. Op. at p. 9, ¶31. Accordingly, as simply an “ordinary creditor” of the alleged partnership, the Defendants have established a more than reasonable

likelihood of success on the partnership issues in this action, or in proving that a money judgment could not satisfy the Plaintiff who is, at best, an ordinary creditor. *Matteson*, 749 N.W.2d at 568.²

d. No Evidence of Partnership Distributions

The Plaintiff has not shown, nor has the Court made any findings of fact, that (a) that the Plaintiff has ever received a share of the supermarket profits at any time over the past 26 years, as opposed to a salary as a regular employee; or (b) that United Corporation d/b/a Plaza Extra ever shared with or distributed to Plaintiff any of its profits. Further, during the criminal proceedings, Waleed Hamed and Waheed Hamed, as co-defendants in the Criminal Action and co-signatories of the Plea Agreement, never expressed the claim that Plaintiff held any interest in the Plaza Extra supermarket operations as an alleged “partner” with Fathi Yusuf or otherwise; or the claim that any Hamed family member had received any share of the profits distributed from the supermarket operations. To the contrary, the Hameds actively represented to the Government and others that United Corporation d/b/a Plaza Extra was a *de jure* Virgin Islands **corporation** and that no Hamed possessed any interest in Plaza Extra as a partnership or otherwise. Accordingly, the Court’s conclusion that the “partial performance” doctrine applies to this case is belied by the record before the Court.

e. The alleged Partnership was Terminated.

The Court has concluded in the Order that the partnership was terminated by delivery of the notice by counsel for Yusuf to Waleed Hamed on March 13, 2012. *See* Memo. Op. at p. 9, ¶30. Plaintiff has repeatedly stated that the dissolution notice was evidence of a partnership; so much so that the Plaintiff virtually recites the terms of that notice in each pleading and letter to third parties.

² Plaintiff’s admitted “retire[ment]” in 1996 also raises serious issues regarding the statute of limitations, such that, again, Plaintiff cannot establish a likelihood of success on the merits. (*See also* Defendants’ Nov. 5, 2012 Renewed Motion to Dismiss (D.V.I. Doc. # 29)).

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In effect, Plaintiff cites the specific provisions of the dissolution as proof of Defendant Fathi Yusuf's view that the "joint venture" as a partnership.

The dissolution notice has terminated the "at-will partnership" between Defendant Yusuf and Plaintiff Hamed. It is well established that a partnership at will ceases to exist upon notice by a partner of his intent to dissolve it. See *Browne v. Ritchey*, 202 Ill.App.3d 137 (1990). Before the *Browne* court was an at-will-partnership which was properly terminated by defendant partner when he sent a telegram to plaintiff partner stating his intent to dissolve partnership. The *Browne* Court noted that since the defendant partner acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, grant of preliminary injunction requiring him to continue in that relationship was an abuse of discretion.

Here, this Court made the following finding of fact:

"Thereafter, ***discussion commenced initiated by Yusuf's counsel regarding the "Dissolution of Partnership."*** Pl. Ex. 10, 11, 12. On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. Pl. Ex. 12. Settlement discussion followed those communications but have not to date resulted in an agreement.

Preliminary Injunction Order, p.9, ¶30. (Emphasis Supplied).

Here, as in *Browne*, this Court specifically found that the termination of the "partnership" occurred on March 13th, 2012 by way of a "Dissolution Notice"; further, though unsigned, the Dissolution Notice contained an agreement as to the scope and terms of the "partnership." With the partnership terminated, the court cannot now issue a preliminary injunction order demanding that the parties continue to operate the disputed partnership because there are no continuing partnership operations to manage.

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The State of Illinois which has adopted the Uniform Partnership Act, also recognizes the same Preliminary Injunction requirements in the Virgin Islands. In *Browne*, the Illinois Supreme Court, marrying the preliminary injunction requirements with the partnership law regarding dissolution arrived at the following precise and relevant holding:

“With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships [] are subject to dissolution at any time by the express will of any partner. (*Maimom v. Telman* (1968), 240 N.E.2d 652; 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving partner need do is give notice of his intent to dissolve the partnership to his co-partners. *Id.* (*citations omitted*).

The *Browne* court then held “there is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a *dissolution at the election of one of the partners* is not a breach of contract and the dissolving partner incurs no liability regardless of his motive or any injury to his co-partners “who neglected to protect themselves by an agreement to continue for a definite term.” *Id.* at 811.

Plaintiff Hamed cannot use a partnership dissolution notice as proof of the existence of an at-will partnership and simultaneously ignore its terminative effect upon the partnership. Plaintiff's request for continued joint management is therefore invalid, since the partnership does not exist beyond the termination notice. Thus, any request for an injunction to maintain the continued joint management of a partnership or joint venture that has been terminated must be denied.

ii. Irreparable Injury to the Defendants

As a threshold matter, “[w]here, as here, the denial of a stay will utterly destroy the status quo, irreparably harming appellants, but the granting of a stay will cause relatively slight harm to appellee, *appellants need not show an absolute probability of success in order to be entitled to a stay.*” *Providence Journal Co. v. FBI*, 595 F.2d at 890 (emphasis added). As detailed above, the Court's Order destroys

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the status quo by providing the Plaintiff with management rights that he never had via mandatory relief. Thus, under this reduced standard, the Defendants have demonstrated that they are entitled to a stay.

Further, insofar as United Corporation is concerned, the Court's Order effectively (although not explicitly stating) pierces the corporate veil of a *de jure* corporation. This was legal error as the Plaintiffs have neither plead, nor introduced into the record any evidence that would support piercing of the corporate veil. *See Radaszewski v. Telecom Corp.*, 981 F.2d 305, 306 (8th Cir. 1992) (discussing tripartite test to pierce the corporate veil).

As a result Defendant United Corporation is left in an untenable position as some assets (the determination of which the Court never made) may be enjoined, while others may not be enjoined. Further, the Court's Order has now compromised all of the contracts United Corporation has entered into as the collateral for those transactions has been effectively eviscerated. This will invariably result in United Corporation being in violation of covenants, representations, and warranties made to third-parties. Consequently, United Corporation must now review every potential contract to ascertain whether United Corporation is in default of any term of every contract. Of course this will result in United Corporation being exposed to civil liability for its default and/or breach of contract.

iii. There Will be no Irreparable Injury to the Plaintiff if the Injunction Order is Stayed.

The record evidence is clear – the Plaintiff retired in 1996. There has been no evidence that he has attempted to reintroduce himself to the day-to-day operations. Thus, a stay will place the Plaintiff in exactly the same position that he was in for the better part of two decades. Indeed, the Plaintiff filed his initial motion in September of last year, and this Court did not grant the motion until the very end of April, a span of over half a year. If the Plaintiff suffered no irreparable injury in

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waiting for six months for this Court to rule, it follows that waiting another few months for the Virgin Islands Supreme Court to rule cannot be an irreparable injury as well.

Further, the Plaintiffs "authorized agents" have not been fired without cause. And, indeed, this Court heard testimony that they are, in fact, still employed. Moreover, assuming that the Plaintiff is a "partner" (again a point we dispute), the appointment of his sons as his "authorized agents" is nothing more than the substitution/admission of new partners – which is explicitly prohibited by statute without the consent of the existing partners. 26 V.I.C. § 71. Accordingly, the Plaintiff will suffer no irreparable injury.

iv. A Stay of the Injunction Order Will not Cause any Harm to the Public

This Court's Memorandum Opinion concluded that the Plaza Extra Supermarkets should continue to operate because the public interest is served by the continued employment of 600 Virgin Islanders. Memo. Op. at p. 22, ¶27. Based on the Court's reasoning, the closing of the Plaza Extra Supermarkets will not be in the public's interest, but that is exactly what the Court's Order precipitates.

The Court has concluded that there is an at-will partnership (a conclusion we will continue to dispute), but any at-will partnership can be terminated by any of the partners, regardless of cause, at any time. 26 V.I.C. § 171(1). The Defendants anticipate that every employee will be terminated as the purported "partnership" can, and will, be dissolved. Consequently, contrary to the Court's conclusion, the very continued employment of 600 Virgin Islands is put at risk (and not saved) by the Court's Order.

C. The Order Violates Rule 65(e)(1)

The Court's Order, to the extent it addresses employer and employee issues is explicitly prohibited by Fed. R. Civ. P. 65(e)(1) which make clear that Rule 65, and any attendant order issued

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under Rule 65's power, does not modify any statute relating to TRO's and/or preliminary injunctions. 24 V.I.C. § 341 provides, in full, that: "[n]o court of the Virgin Islands shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict accordance with the provisions of this chapter."

Mohammad Hamed testified that: "And Mr. Yusuf tell me, you is my partner, not your son. *Your son employees, the two, 4.65 an hour, and I like any employees.* I tell him I'm not saying nothing, you is my partner. Whatever you say I agree with you." Jan. 25, 2013 Hr'g Tr. at 201:21-24 (emphasis added). And the Plaintiff made clear, lest there be any mistake, when he answered responded to the following questions:

Q: Is Fathi Yusuf partners with Waleed?

A: Ha?

Q: Is Fathi Yusuf partners with Waleed, your son Waleed?

A: No. But he is my partner. I, not my son.

Q: Your other sons are not partners with Fathi Yusuf, correct?

A: Yes. I'm his partner, not my son.

Jan. 25, 2013 Hr'g Tr. at 209:13-20.

Accordingly, based on the undisputed record evidence the Mohammed Hamed's son are nothing more that employees, the Order the attempts to interfere with the employer-employee relations is void *ab initio* as a matter of law.

D. The Bond Amount is Entirely Inadequate and Unsupported by Any Evidence

As described in detail in the concurrently filed emergency motion for reconsideration or preliminary injunction order and for stay of same pending posting of adequate bond, this Court should also stay the effect of its order pending said motion.

This Court's ruling runs afoul of Rule 65(c) and Third Circuit precedent regarding what qualifies as an adequate bond. *See Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 189 (3d Cir. 1990) ("agree[ing] with defendants that the injunction suffers at least one fatal defect: the [trial]

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court made no attempt to ensure that the value of assets encumbered bore some reasonable relationship to the likely amount of plaintiffs' expected recovery" and thus "conclud[ing] that the preliminary injunction *must be set aside*") (emphasis added). Accordingly, a stay should be entered.

E. The Entry of a Preliminary Injunction is Procedurally Improper Given the Pending Renewed Motion to Dismiss

A separate basis supporting a stay of the Preliminary Injunction Order, pending its appeal, is the pendency of Defendants' November 5, 2012 Renewed Motion to Dismiss. *See, e.g., Gilles v. Garland*, 281 Fed. Appx. 501, 503 (6th Cir. 2008) (noting trial court's issuance of "a calendar order directing that the preliminary injunction motion be held in abeyance pending a ruling on the motion to dismiss"); *Leslie v. Federal Nat'l Mortgage Ass'n*, No. 3:10-cv-963, 2010 U.S. Dist. LEXIS 79180, at *6 (D. Conn. Aug. 5, 2010) (noting trial court's grant of "Motion to Stay consideration of the TRO and preliminary injunction motions pending resolution of [Fed. R. Civ. P. 12] motion to dismiss," raising, as here, Rule 12(b)(6) challenges for failure to state a cause of action).

Indeed, Defendants' Rule 12 challenges to the Amended Complaint should be resolved at the earliest stages of litigation, so as to conserve the time and resources of the Court and the parties should the Court grant any of those challenges and thus narrow and/or clarify the scope of these proceedings. Similarly, if this Court grants any of the relief requested in Defendant's motion to dismiss prior to the Virgin Islands Supreme Court's resolution of the forthcoming appeal of the Preliminary Injunction Order, significant judicial and party resources will have been wasted. Accordingly, given that the entire case can, and should, be dismissed for the reasons articulated in the pending Renewed Motion to Dismiss, this Court should stay the Preliminary Injunction Order.

V. CONCLUSION

WHEREFORE, for the reasons articulated and set forth *supra*, this Court should stay its preliminary injunction order *instanter*.

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Respectfully submitted,



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Co-counsel for Defendants Fathi Yusuf and United Corporation

Dated: May 9, 2013

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Motion to Stay Preliminary Injunction Order

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.



Nizar A. DeWood, Esq.

EXHIBIT

A

Verified Shareholder Derivative Complaint

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

YUSUF YUSUF, derivatively on behalf of
PLESSEN ENTERPRISES, INC.,

Plaintiff,

vs.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
FIVE-H HOLDINGS, INC.,

Defendants,

-and-

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

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CASE # SX-13-CV- _____

CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff YUSUF YUSUF (“YUSUF”), by and through his undersigned counsel, derivatively on behalf of PLESSEN ENTERPRISES, INC. (“PLESSEN”), and as a shareholder of PLESSEN, hereby files this Verified Complaint against Defendants WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED (collectively, the “INDIVIDUAL DEFENDANTS”), and FIVE-H HOLDINGS, INC. (“FIVE-H”), and against Nominal Defendant PLESSEN, and alleges:

I. BACKGROUND

1. Plaintiff YUSUF brings this shareholder derivative action on behalf of PLESSEN against a member and officer of PLESSEN’s Board of Directors (the “Board”) and others, including certain shareholders of PLESSEN, to remedy, among other things, the fraudulent misappropriation of PLESSEN’s assets, including the recent unauthorized transfer by WALEED HAMED of approximately \$460,000 from PLESSEN’s bank accounts, representing approximately 99 percent

(99%) of the monies in those accounts, for the benefit of the INDIVIDUAL DEFENDANTS as well as FIVE-H; breach of fiduciary duties; corporate waste; conversion; unjust enrichment; civil conspiracy; and other relief, including the imposition of a constructive trust and an accounting, and other preliminary and permanent injunctive relief.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has jurisdiction over this action pursuant to 4 VIC § 76(a).
3. Venue is proper in this district pursuant to 4 VIC § 78(a).
4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff YUSUF is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
6. Defendant WALEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
7. Defendant WAHEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
8. Defendant MUFEEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
9. Defendant HISHAM HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
10. Defendant FIVE-H is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.
11. Nominal Defendant PLESSEN is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

IV. FACTS COMMON TO ALL COUNTS

PLESSEN

12. PLESSEN was formed in December 1988. A copy of PLESSEN's Articles of Incorporation is attached as Exhibit "A" hereto. PLESSEN adopted By-Laws on or about April 30, 1997, a copy of which is attached as Exhibit "B" hereto.

13. PLESSEN's original Board was comprised of the following individuals: Mohammed Hamed, Defendant WALEED HAMED and Fathi Yusuf. See Exhibit "A" at p. 3.

14. After PLESSEN's formation, an additional seat on the Board was created.

15. The current members of PLESSEN's Board are: Mohammed Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf. Attached as Exhibit "C" hereto is a report from the Virgin Islands Department of Licensing and Consumer Affairs that lists Maher Yusuf as a Director of PLESSEN.

16. PLESSEN's current Officers are: Mohammed Hamed (President), Defendant WALEED HAMED (Vice President) and Fathi Yusuf (Treasurer and Secretary). See Exhibit "A" at p. 3.

17. PLESSEN is owned in various shares by the following individuals: Plaintiff YUSUF, Fathi Yusuf, Mohammed Hamed, Fawzia Yusuf, Maher Yusuf, Nejah Yusuf, and Defendants WALEED HAMED, MUFEED HAMED, WAHEED HAMED, and HISHAM HAMED.

18. Plaintiff YUSUF is a shareholder of PLESSEN, was a shareholder of PLESSEN at the time of the wrongdoing alleged herein, has been a shareholder of PLESSEN continuously since that time, and will continue to be a shareholder of PLESSEN throughout the pendency of this action.

19. YUSUF, under Rule 23.1 of the Federal Rules of Civil Procedure, which applies in this action under Rule 7 of the Superior Court, has standing to bring this action and will adequately and fairly represent the interests of PLESSEN and its shareholders in enforcing and prosecuting its rights.

FIVE-H

20. Upon information and belief, Defendant WALEED HAMED is the President of FIVE-H and one of its principal beneficial owners.

21. Upon information and belief, Defendant WAHEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

22. Upon information and belief, Defendant MUFEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

23. Upon information and belief, Defendant HISHAM HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

24. Upon information and belief, FIVE-H, by and through the INDIVIDUAL DEFENDANTS, seeks to conduct business in the U.S. Virgin Islands.

WALEED HAMED's Misappropriation of \$460,000

25. On or about March 27th, 2013, Plaintiff YUSUF paid with his personal Banco Popular Visa credit card the 2011 property taxes of PLESSEN.

26. YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

27. However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made to pay Plaintiff YUSUF's Banco Popular Visa credit card account would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

28. It was then revealed that on March 27, 2013, Defendants WALEED HAMED & MUFEED HAMED, without authorization, issued check number 0376 on a PLESSEN in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

x

29. Defendant WALEED HAMED then endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in Defendant WALEED HAMED’s personal bank account.

30. Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile

31. Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.

32. As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.

33. Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

34. Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, and his acts were not, and could not have been, the product of a good faith exercise of business judgment.

35. Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.

36. All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

V. CAUSES OF ACTION

COUNT I – FRAUD/CONSTRUCTIVE TRUST (Against All Defendants)

37. Plaintiff YUSUF incorporates paragraphs 1 through 36 above as if fully set forth herein.

38. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H conspired and fraudulently misappropriated, converted and/or received the benefits of PLESSEN'S funds of approximately \$460,000.

39. Such funds were, upon information and belief, used directly and indirectly to acquire personal and/or real property in the benefit of the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively.

40. Defendants' acts constitute a fraud, unconscionable conduct and/or questionable ethics resulting in unjust benefit to the wrongdoers, *i.e.*, Defendants.

41. To remedy such injustice, this Court should impose a constructive trust for the benefit of PLESSEN until the resolution of this action on all personal and/or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust:

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*, when Defendant WALEED HAMED, & MUFEEED HAMED without authorization, issued check number 0376 in the amount of \$460,000 from PLESSEN's Scotiabank account;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;

- iv. is superior to any creditor of the Defendants;
- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action, based on the notice provided herein regarding the wrongful misappropriation of PLESSEN's funds as alleged in this Complaint and otherwise.

42. As noted above, "the date upon which a constructive trust is legally deemed to arise relates back in time to when the facts giving rise to such fraud or wrong occur," *i.e.*, March 27, 2013 in this action. *In re: Pitchford*, 410 B.R. 416, 420 (Bankr. W.D. Pa. 2009); *see also Osmond Kean, Inc. v. First Penn. Bank, N.A.*, 22 V.I. 71, 76 (Terr. Ct. 1986) ("The creditors of the constructive trustee are not bona fide purchasers.' Moreover, 'where a person holds property subject to a constructive trust, his creditors are not purchasers for value and are subject to the constructive trust. . . . So also, a creditor who attaches the property . . . is not a bona fide purchaser, although he had no notice of the constructive trust.'" (quoting Restatement of Restitution §§ 160 and 173); *Francois v. Francois*, 599 F.2d 1286 (3d Cir. 1979) (affirming trial court's "equitable power" to impose constructive trust to prevent unjust enrichment).

COUNT II – CONVERSION
(Against WALEED HAMED & MUFEED HAMED)

43. Plaintiff YUSUF incorporates paragraphs 1 through 42 above as if fully set forth herein.

44. As alleged in detail herein, Defendants WALEED HAMED & MUFEED HAMED wrongfully, and without the knowledge, consent or authorization of PLESSEN, misappropriated funds belonging to PLESSEN for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H.

45. Defendant WALEED HAMED obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H with the intent to permanently deprive PLESSEN of its lawful rights to those funds.

46. Accordingly, Defendants WALEED HAMED & MUFEED HAMED are liable for conversion.

**COUNT III – BREACH OF FIDUCIARY DUTIES
(Against WALEED HAMED)**

47. Plaintiff YUSUF incorporates paragraphs 1 through 46 above as if fully set forth herein.

48. Defendant WALEED HAMED, as an agent and officer of PLESSEN, owes PLESSEN's shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty.

49. Further, Defendant WALEED HAMED is, and at all relevant times was, required to use his utmost ability to control and manage PLESSEN in a fair, just, honest and equitable manner; to act in furtherance of the best interests of PLESSEN and its shareholders so as to benefit all shareholders equally and not in furtherance of his personal interests or benefit to the exclusion of the remaining shareholders; and to exercise good faith and diligence in the administration of the affairs of PLESSEN and in the use and preservation of its property and asserts.

50. By virtue of the foregoing duties, Defendant WALEED HAMED was required to, among other things:

- i. exercise good faith in ensuring that the affairs of PLESSEN were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business in accordance with applicable laws;
- ii. refrain from wasting PLESSEN's assets;
- iii. refrain from unduly benefiting himself and other non-shareholders at the expense of PLESSEN;

- iv. refrain from self-dealing;
- v. exercise the highest obligations of fair dealing; and
- vi. properly disclose to PLESSEN's shareholders all material information regarding the company.

51. However, by virtue of his position as Director and Officer of PLESSEN, and his exercise of control over the business and corporate affairs of PLESSEN, Defendant WALEED HAMED has, and at all relevant times had, the power to control and influence – and did control and influence – PLESSEN to engage in the wrongdoings alleged herein.

52. Specifically, as alleged in detail herein, Defendant WALEED HAMED breached his fiduciary duties by, among other things, unlawfully obtaining approximately \$460,000 of PLESSEN's funds; knowingly failing to inform PLESSEN regarding all material information related to such taking prior to the subject withdrawals; and otherwise knowingly failing to adhere to PLESSEN's corporate formalities, policies and procedures.

53. As a direct and proximate result of the foregoing breaches, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT IV – WASTE OF CORPORATE ASSETS
(Against WALEED HAMED)**

54. Plaintiff YUSUF incorporates paragraphs 1 through 53 above as if fully set forth herein.

55. As alleged in detail herein, Defendant WALEED HAMED, an agent and officer of PLESSEN, knowingly withdrew approximately \$460,000 of PLESSEN's funds, which withdrawal constituted an exchange of corporate assets under circumstances which no business person of ordinary, sound judgment could conclude that PLESSEN received adequate consideration.

56. As a direct and proximate result of the foregoing waste of corporate assets, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT V – UNJUST ENRICHMENT
(Against All Defendants)**

57. Plaintiff YUSUF incorporates paragraphs 1 through 56 above as if fully set forth herein.

58. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H individually and collectively were unjustly enriched by their receipt, benefit, use, enjoyment and/or retention of PLESSEN's assets.

59. It would be unconscionable to allow the INDIVIDUAL DEFENDANTS and FIVE-H individually or collectively to retain the benefits thereof.

**COUNT VI – CIVIL CONSPIRACY
(Against All Defendants)**

60. Plaintiff YUSUF incorporates paragraphs 1 through 59 above as if fully set forth herein.

61. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, *i.e.*, to, among other things, unlawfully defalcate or misappropriate the funds of PLESSEN.

62. The INDIVIDUAL DEFENDANTS and FIVE-H knowingly performed overt acts and took action to further or carry out the unlawful purposes of the subject conspiracy, including, but not limited to, Defendant WALEED HAMED's issuing and cashing of check number 0376 to the conspirators' benefit and PLESSEN's detriment.

63. As a direct and proximate result of the foregoing civil conspiracy, PLESSEN has sustained damages, including, but not limited to, damage to its reputation, loss of the funds unlawfully obtained from its Scotiabank account, and lack of control of PLESSEN's management and corporate affairs.

**COUNT VII – ACCOUNTING
(Against All Defendants)**

64. Plaintiff YUSUF incorporates paragraphs 1 through 63 above as if fully set forth herein.

65. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H unlawfully benefited from and/or misappropriated PLESSEN's funds.

66. Further, at all times relevant, Defendant WALEED HAMED, as an agent and officer of PLESSEN, owed to PLESSEN a fiduciary duty to account to the company and its shareholders in a timely and accurate manner.

67. At all times relevant, the INDIVIDUAL DEFENDANTS and/or FIVE-H held the exclusive possession and/or control over documentation that would establish the funds unlawfully taken from PLESSEN.

68. Absent such documentation, PLESSEN is without the means to determine, among other things, if funds are owned to it and, if yes, how much; and if its misappropriated funds were used to purchase any real or personal property, in which case it has an ownership interest in such property.

69. PLESSEN is without a sufficient remedy at law to ascertain its losses and/or interests in the misappropriated funds as set forth herein.

70. Accordingly, a full accounting is warranted.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff YUSUF prays for a Final Judgment against Defendants, jointly and severally, as follows:

- A. Determining that YUSUF may maintain this action on behalf of PLESSEN and that YUSUF is an adequate representative of PLESSEN;
- B. Determining that this action is a proper derivative action that is maintainable under law and in which a pre-suit demand was excused;
- C. Awarding to PLESSEN the actual and compensatory damages that it sustained as a result of the causes of action set forth herein, which damages will be determined at trial;
- D. Awarding to PLESSEN punitive damages justified by the acts set forth herein, which damages will be determined at trial;
- E. Ordering the disgorgement to PLESSEN of all funds that were unlawfully misappropriated from its possession;
- F. Enjoining, preliminarily and permanently, the Defendants' benefit, use or enjoyment of PLESSEN's misappropriated funds;
- G. Imposing a constructive trust for the benefit of PLESSEN on all personal or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust
 - i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*;
 - ii. grants to PLESSEN first rights to any such property;
 - iii. is superior to the rights of the Defendants, and each of them;
 - iv. is superior to any creditor of the Defendants;

- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action;

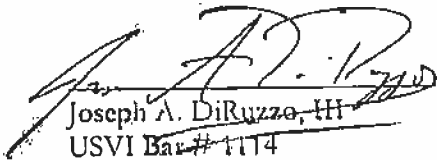
H. Awarding a full accounting of all monies, funds and assets that the Defendants received from PLESSEN;

I. Awarding to PLESSEN the costs and disbursements of this action, including, but not limited to, reasonable attorneys' fees, accountants' and experts' fees, costs and expenses;

J. Awarding pre- and post-judgment interest on any monetary award at the highest rates allowed by law; and,

K. Awarding such further equitable and monetary relief as the Court deems just and appropriate.

Dated April 16, 2013



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EXHIBIT A

**ARTICLES OF INCORPORATION
PLESSEN ENTERPRISES, INC.**

CERTIFICATION
Certified to be a true and correct copy
Kenneth E. Mapp
Kenneth E. Mapp
Lieutenant Governor

ARTICLES OF INCORPORATION

OF

PLESSEN ENTERPRISES, INC.

(A Virgin Islands Corporation)

We, the undersigned, being natural persons of lawful age, do hereby unite together by these articles of incorporation to form a stock corporation for the purposes hereinafter mentioned, under the laws of the Virgin Islands of the United States and by virtue of Chapter One of Title 13 of the Virgin Islands Code, and to that end we do, by this our certificate, set forth:

FIRST: The name of the corporation is

PLESSEN ENTERPRISES, INC.

SECOND: The purposes for which the corporation is formed are:

(a) To acquire by purchase or lease, or otherwise, lands and interests in lands, and to own, hold, improve, develop, and manage any real estate so acquired and to erect or cause to be erected on any lands owned, held, or occupied by the Corporation, buildings, or other structures with their appurtenances, to rebuild, enlarge, alter, or improve any buildings or other structures now or hereafter erected on any lands so owned, held, or occupied, and to mortgage, sell, lease or otherwise dispose of any lands or interests in lands and in buildings or other structures and any stores, shops, suites, rooms or parts of any buildings, or other structures at any time owned or held by the corporation;

(b) To build, erect, construct, lease, or otherwise acquire, manage, occupy, maintain, and operate buildings for hotel purposes, dwelling houses, apartment houses, office buildings, and business structures of all kinds for the accommodation of the public and of individuals, including shopping centers.

(c) To buy, sell, trade, manufacture, deal in and deal with goods, wares, utilities, including water, and merchandise of every kind and nature, and to carry on such business as manufacturers, wholesalers, retailers, importers, exporters, and as representatives of manufacturers and producers of such goods, wares and merchandise or of any agency of such manufacturers.

(d) To purchase or otherwise acquire, and to hold, mortgage, pledge, sell exchange or otherwise dispose of securities (which term for the purpose of this Article SECOND includes, without limitation of the generality thereof, any shares of stock, bonds, debentures, notes, mortgages or other obligations and any certificates, receipts or other instruments representing rights to receive, purchase or subscribe for the same, or representing any other rights or interests therein or in any property or assets) created or issued by any one or more persons, firms, associations, corporations or governments; to make payment therefor in any lawful manner; and to exercise as the owner or holder of any securities any and all rights, powers and privileges in respect thereof; and to make, enter into, perform and carry out contracts of every kind and description with any person, firm, association, corporation or government.

(e) To acquire by purchase, exchange or otherwise, all or any part of, or any interest in, the properties, assets, business and good will of any one or more persons, firms, associations, corporations or governments heretofore or hereafter engaged in any business for which a corporation may now or hereafter be organized under the laws of the Virgin Islands of the United States; to pay for the same in cash, property or its own or other securities; to hold, operate, reorganize, liquidate, sell or in any manner dispose of the whole or any part thereof; and in connection therewith, to assume or guarantee performance of any liabilities, obligation, or contracts of such persons, firms, associations, corporations, or governments, and to conduct the whole or any part of any business thus acquired.

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

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The foregoing provisions of this Article SECOND shall be construed both as purposes and powers and each as independent purposes and powers. The foregoing enumeration of specific purposes and powers shall not be held to limit or restrict in any manner the purposes and powers of the corporation, and the purposes and powers herein specified shall, except when otherwise provided in this Article SECOND, be in nowise limited or restricted by reference to, or inference from, the terms of any provision of this or any other Article of these Articles of Incorporation; provided that nothing herein contained shall be construed as authorizing the corporation to carry on any business or exercise any power in the Virgin Islands, of the United States or in any country, state, territory, dependency, colony, or possession which under the laws thereof the corporation may not lawfully carry on or exercise.

THIRD: The total number of shares of capital stock which the corporation shall have authority to issue is ONE THOUSAND (1,000), having no par value, and all of a single class to be designated Common Stock.

FOURTH: The minimum amount of capital with which the corporation will commence business is ONE THOUSAND (\$1,000.00) DOLLARS.

FIFTH: The town and street address of the principal office or place of business of the corporation is: United Shopping Plaza, 4 C & D Estate Slon Farm, Christiansted, St. Croix, V.I.

SIXTH: The period for which the corporation shall exist is unlimited.

The Resident Agent of the corporation is: FATHI YUSUF, 92 A & B La Grande Princess, Christiansted, St. Croix, V.I.

SEVENTH: The By-Laws of the corporation shall set the number of directors thereof, which shall not be less than three.

EIGHTH: The names and addresses of the first Board of Directors of this corporation who shall hold office until their successors are elected and qualified shall be:

<u>NAME</u>	<u>ADDRESS</u>
MOHAMAD HAMED	6-H Carlton Garden P.O. Box 2926 F'sted, St. Croix U.S. Virgin Islands
WALBED HAMED	6-H Carlton Garden P.O. Box 2926 F'sted, St. Croix U.S. Virgin Islands
FATHI YUSUF	92 A & B La Grande Princess C'sted St. Croix U.S. Virgin Islands

NINTH: The names of each of the officers of this corporation who shall hold office until their successors are elected shall be:

<u>NAME</u>	<u>OFFICE</u>
MOHAMAD HAMED	President
WALBED HAMED	Vice-President
FATHI YUSUF	Secretary - Treasurer

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

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TENTH: The names and places of residence of the undersigned incorporators, being all of the persons forming the corporation are:

<u>NAME</u>	<u>ADDRESS</u>
MOHAMAD HAMED	6-H Carlton Garden P.O. Box 2926 F'sted, St. Croix U.S. Virgin Islands
WALEED HAMED	6-H Carlton Garden P.O. Box 2926 F'sted, St. Croix U.S. Virgin Islands
FATHI YUSUF	92 A & B La Grande Princess Christiansted, St. Croix U.S. Virgin Islands

ELEVENTH: For the management of the business and the conduct of the affairs of the corporation, and in further definition, limitation and regulation of the powers of the corporation and of its directors and stockholders, it is further provided:

(a) The number of directors of the corporation set in the By-Laws of the corporation may from time to time be increased, or decreased to not less than three, in such manner as may be prescribed by the By-Laws. Subject to the then applicable provisions of the By-Laws, the election of directors need not be by ballot and directors need not be stockholders.

(b) In furtherance and not in limitation of the powers conferred by the laws of the Virgin Islands of the United States, the Board of Directors is expressly authorized and empowered:

(i) To make, alter, amend, and repeal By-Laws for the management of the affairs of the corporation not inconsistent with law, subject to the right of a majority of the stockholders to amend, repeal, alter or modify such By-Laws at any regular meeting or at any special meeting called for such purpose.

(ii) Subject to the then applicable provisions of the By-Laws then in effect, to determine, from time to time, whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholders shall have any right to inspect any account or book or document of the corporation, except as conferred by the laws of the Virgin Islands of the United States, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the corporation.

(iii) Without the assent or vote of the stockholders, to authorize and issue obligations of the corporation, secured or unsecured, to include therein such provisions as to redeemability, convertibility or otherwise, as the Board of Directors in its sole discretion may determine, and to authorize the mortgaging or pledging, as security therefor, of any property of the corporation, real or personal, including after-acquired property, to the extent permitted by law.

(iv) To determine whether any, and if any, what part of the corporate funds legally available therefor shall be declared in dividends and paid to the stockholders, and to direct and determine the use and disposition of any such funds.

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

- 5 -

(v) To set apart out of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish or reduce the amount of any such reserve in the manner in which it was created.

(vi) To fix from time to time the amount of earnings of the corporation to be reserved as working capital or for any other lawful purpose.

(vii) To establish and amend pension, bonus, profit-sharing or other types of incentive or compensation plans for the employees (including officers and directors) of the corporation and to fix the amount of funds legally available therefor and to determine, or establish procedures for determining, the persons to participate in any such plans and the amounts of their respective participations.

(c) In addition to the powers and authorities hereinbefore or by statute expressly conferred upon it, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, subject, nevertheless, to the provisions of the laws of the Virgin Islands of the United States, of the Articles of Incorporation, and of the By-Laws of the corporation.

(d) Any director or any officer elected or appointed by the stockholders or by the Board of Directors may be removed at any time in such manner as shall be provided in the By-Laws of the corporation.

(e) No contract or other transaction between the corporation and any other corporation and no other act of the corporation shall, in the absence of fraud, in any way be affected or invalidated by the fact that any of the directors of the corporation are pecuniarily or otherwise interested in, or are director or officers of, such other corporation. Any directors of the corporation individually or any firm or association of which any director may be member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the corporation, provided that the fact that he individually or such firm or association is so interested shall be disclosed or shall have been known to the Board of Directors or a majority of such members thereof as shall be present at any meeting of the Board of Directors at which action upon such contract or transaction shall be taken. Any director of the corporation who is also a director or officer of such other corporation or who is so interested may be counted in determining the existence of a quorum at any meeting of the Board of Directors which shall authorize any such contract or transaction, and may vote thereat to authorize any such contract or transaction, with like force and effect as if he were not such director or officer of such other corporation or not so interested. Any director of the corporation may vote upon any contract or other transaction between the corporation and any parent, subsidiary or affiliated corporation without regard to the fact that he is also a director of such parent, subsidiary or affiliated corporation.

(f) Any contract, transaction or act of the corporation or of the directors which shall be ratified by a majority of a quorum of the stockholders of the corporation at any annual meeting or at any special meeting called for such purpose, shall, insofar as permitted by law, be as valid and as binding as though ratified by every stockholder of the corporation; provided, however, that any failure of the stockholders to approve or ratify any such contract, transaction or act, when and if submitted, shall not be deemed in any way to invalidate the same or deprive the corporation, its directors officers or employees, of its or their right to proceed with such contract, transaction or act.

(g) Subject to any limitation in the By-Laws, the members of the Board of Directors shall be entitled to reasonable fees, salaries or other compensation for their services and to reimbursement for their expenses as such members. Nothing contained herein shall preclude any director from serving the corporation, or any subsidiary or affiliated corporation, in any other capacity and receiving proper compensation therefor.

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

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(h) If the By-Laws so provide, the stockholders and Board of Directors of the corporation shall have the power to hold their meetings, to have an office or offices and to keep the books of the corporation, subject to the provisions of the laws of the Virgin Islands of the United States, within or without said Islands at such place or places as may from time to time be designated by them.

(i) Any person who shall have acted at any time as a director or officer of the corporation or served at its request as a director or officer of another corporation in which it then owned shares of capital stock or of which it was then a creditor shall be entitled to be indemnified by this corporation against all expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been a director or officer of this corporation, or of such other corporation, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any By-Law, agreement, vote of stockholders or otherwise.

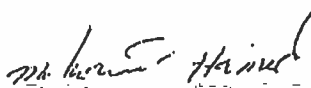
(j) The shares of stock which the corporation shall have authority to issue may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors; and any and all share so issued, the consideration for which has been paid or delivered, shall be fully paid stock and shall not be liable to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares. No holder of shares of stock of the corporation shall have any preemptive or preferential right of subscription to any shares of stock of the corporation, issued or sold, nor any right of subscription to any thereof other than such, if any, as the Board of Directors of the corporation in its discretion may from time to time determine and at such price and upon such terms and conditions as the Board of Directors may issue stock of the corporation or obligations convertible into such stock or optional rights to purchase or subscribe, or both, to such stock without offering such issue, either in whole or in part, to the stockholders of the corporation. The acceptance of stock in the corporation shall be a waiver of any such preemptive or preferential right which in the absence of this provision might otherwise be asserted by stockholders of the corporation or any of them.

TWELFTH: From time to time any of the provisions of these Articles of Incorporation may be amended, altered or repealed, and other provisions then authorized or permitted by the laws of the Virgin Islands of the United States may be added or inserted in the manner then prescribed or permitted by said laws. All rights at any time conferred upon the stockholders of this corporation by these Articles of Incorporation and granted subject to the provisions of this Article TWELFTH.

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IN WITNESS WHEREOF, we, the undersigned, being all of the incorporators hereinbefore named, for the purposes aforesaid, have signed, sealed and acknowledged these Articles of Incorporation in triplicate, hereby declaring and certifying that the facts therein stated are true, this 26 day of December, 1988.



MOHAMAD HAMED



WALEEH HAMED




FATHI YUSUF

ACKNOWLEDGEMENT

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) SS:

On this 22nd day of December, 1988, before me personally came and appeared MOHAMAD HAMED, WALEEH HAMED, AND FATHI YUSUF, to me known and known to me to be the persons whose names are subscribed to the foregoing Articles of Incorporation, and they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the purposes therein states, and that the fact therein are truly set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

EXHIBIT B

BY-LAWS

PLESSEN ENTERPRISES, INC.

**BY-LAWS
OF
PLESSEN ENTERPRISES, INC.
Adopted on April 30, 1997**

**ARTICLE I
STOCKHOLDERS**

Section 1.1 Annual Meeting. The annual meeting of the Stockholders of the Corporation shall be held each year during the third month after the close of the Corporation's fiscal year, on a day to be duly designated by the Board of Directors, for the purpose of electing Directors and for the transaction of any other corporate business that may come before the meeting.

Section 1.2 Special Meetings. A special meeting of the Stockholders may be called, at any time and for any purpose or purposes, by the President, by a Vice President, or by a majority of the Board of Directors. A special meeting of the Stockholders shall be called forthwith by the President, by a Vice President, by the Secretary, or by any Director of the Corporation at any time, upon the written request of the Stockholders entitled to cast at least twenty-five percent (25%) of all the votes entitled to be cast at the meeting. However, a special meeting need not be called to consider any matter that is substantially the same as a matter voted on at any special meeting of the Stockholders held during the preceding twelve (12) months, unless requested by the Stockholders entitled to cast a majority of all votes entitled to be cast at the meeting. Whenever a special meeting is called by written request of the Stockholders, the request shall state the purpose or purposes of the meeting. Business transacted at any special meeting of Stockholders shall be confined to the purpose or purposes stated in the notice of the meeting.

Section 1.3. Place of Holding Meetings. All meetings of Stockholders shall be held at the principal office of the Corporation, or elsewhere in the United States or its Territories as may be designated by the Board of Directors.

Section 1.4. Notice of Meetings. Written notice of each meeting of the Stockholders shall be given to each Stockholder in accordance with Section 7.2 of these By-Laws, at least ten (10) days and not more than ninety (90) days before the meeting. The notice shall state the place, day, and hour at which the meeting is to be held; in the case of a special meeting, the notice also shall state briefly the purpose or purposes of that special meeting.

Section 1.5. Quorum. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, at each meeting of the Stockholders, the presence in person or by proxy of the holders of record of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting constitutes a quorum. If less than a quorum is in attendance at the time for which the meeting has been called, the meeting may be adjourned from time to time by a majority vote of the Stockholders present in person or by proxy, without any notice other than by announcement at the meeting, until a quorum is in attendance. At any adjourned meeting

at which a quorum is in attendance, any business may be transacted that might have been transacted if the meeting had been held as originally called.

Section 1.6. Conduct of Meetings. Each meeting of the Stockholders shall be presided over by a chairman. The chairman shall be the President of the Corporation or, if the President is not present, a Vice President, or, if none of these Officers is present, a person to be elected at the meeting. The Secretary of the Corporation or, if the Secretary is not present, any Assistant Secretary shall act as secretary of the meeting; in the absence of the Secretary and any Assistant Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

Section 1.7. Voting.

A. At each meeting of the Stockholders, every Stockholder entitled to vote at the meeting has one (1) vote for each share of stock standing in his or her name on the books of the Corporation on the date established for the determination of Stockholders entitled to vote at the meeting. This vote may be cast by the Stockholder either in person or by written proxy signed by the Stockholder or by the Stockholder's duly authorized attorney in fact. Unless the written proxy expressly provides for a longer period, it shall bear a date not more than eleven (11) months prior to the meeting. The written proxy shall be dated, but need not be sealed, witnessed, or acknowledged.

B. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, all elections shall be had and all questions shall be decided by a majority of the votes cast at a duly constituted meeting. If the chairman of the meeting so determines, a vote by ballot may be taken upon any election or matter. A vote by ballot shall be taken upon the request of the Stockholders entitled to cast at least ten percent (10%) of all the votes entitled to be cast on the election or matter. The chairman of the meeting may appoint one or more tellers of election. In that event, the proxies and ballots shall be held by the tellers, and all questions as to the qualification of voters, the validity of proxies and the acceptance or rejection of votes shall be decided by the tellers. If no teller is appointed, these duties shall be performed by the chairman of the meeting.

Section 1.8 Informal Action by Stockholders. Any action required or permitted to be taken at any meeting of the Stockholders may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 196, as from time to time amended.

ARTICLE II BOARD OF DIRECTORS

Section 2.1. General Powers. The property and business of the Corporation shall be managed under the direction of the Board of Directors of the Corporation.

Section 2.2. Number and Term of Office. The number of Directors shall be such

number as may be designated from time to time by resolution of a majority of the entire Board of Directors. However, the number of Directors may not be less than three. Directors need not be Stockholders. Except as otherwise provided in these By-Laws, the Directors shall be elected each year at the annual meeting of the Stockholders, and each Director shall serve until his or her successor is duly elected and qualifies.

Section 2.3. Removal of Directors. Except as otherwise provided in this Section and unless the Charter of the Corporation provides otherwise, the Stockholders may remove any Director from office, with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast for the election of Directors.

Section 2.4. Filling of Vacancies.

A. If a vacancy in the Board of Directors results from the removal of a Director, the Stockholders may elect a successor to fill that vacancy. However, if the Stockholders of any class or series are entitled separately to elect one or more Directors, the Stockholders of that class or series may elect a successor to fill any vacancy that results from the removal of a Director elected by the class or series.

B. Except as otherwise provided in this Section, (i) if a vacancy in the Board of Directors results from an increase in accordance with these By-Laws of the number of Directors, a majority of the entire Board of Directors may elect the person to fill that vacancy, and (ii) if a vacancy in the Board of Directors results from any other cause whether by reason of a Director's death, resignation, disqualification, or otherwise a majority of the remaining Directors, whether or not sufficient to constitute a quorum, may elect a successor to fill that vacancy.

C. A Director elected to fill a vacancy shall serve until the next annual meeting of the Stockholders and, thereafter, until his or her successor is duly elected and qualifies.

Section 2.5. Annual and Regular Meetings. The annual meeting of the Board of Directors shall be held immediately following the annual Stockholders' meeting at which a Board of Directors is elected. Regular meetings of the Board of Directors may be held, without notice, at such time and place as determined from time to time by resolution of the Board. However, notice of every resolution of the Board fixing or changing the time or place for the holding of regular meetings of the Board shall be mailed to each Director at least ten (10) days before the first meeting held pursuant to the resolution. Any business may be transacted at the annual meeting and at any regular meeting of the Board.

Section 2.6. Special Meetings. A special meeting of the Board of Directors may be called, at any time and for any purpose or purposes, by the President or by a Vice President. A special meeting of the Board of Directors shall be called forthwith by the President or by the Secretary upon the written request of a majority of the Board of Directors. Written notice of each special meeting of the Board of Directors shall be given to each Director by

mailing that notice, in accordance with Section 7.2 of these By-Laws, at least three (3) days before the meeting, or by telegraphing or hand-delivering that notice at least one (1) day before the meeting. Any business may be transacted at any special meeting of the Board. Any Director may, in writing, waive notice of the time, place, and purposes of any special meeting. Any meeting of the Board of Directors whether an annual, regular, or special meeting may be adjourned from time to time to reconvene at the same or some other place, and no notice need be given of the reconvened meeting other than by announcement at the adjourned meeting.

Section 2.7. Place of Meeting and Offices. The Board of Directors may hold its meetings, have one or more offices, and keep the books of the Corporation at such place or places, either within or without the Territory of the United States Virgin Islands, as determined from time to time by resolution of the Board of Directors or by written consent of all of the Directors. Members of the Board of Directors or a committee of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time, and such participation in a meeting shall be deemed to constitute presence in person at such meeting.

Section 2.8. Quorum. At each meeting of the Board of Directors, a majority of the entire Board of Directors constitutes a quorum for the transaction of business. If less than a quorum is present at any meeting, a majority of those present may adjourn the meeting from time to time. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, the act of a majority of the Directors present at any meeting at which there is a quorum constitutes the act of the Board of Directors.

Section 2.9. Compensation of Directors. Directors shall not receive any stated salary for their services as such. However, each Director is entitled to receive from the corporation reimbursement of the expenses incurred by the Director in attending any annual, regular, or special meeting of the Board or of a committee of the Board. In addition, by resolution of the Board of Directors, a fixed sum may be also be allowed for attendance at each annual, regular, or special meeting of the Board or of a committee of the Board. Reimbursement and compensation to a Director for attending a meeting shall be payable even if the meeting was adjourned because of the absence of a quorum. Nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation for that service.

Section 2.10. Executive Committee. By resolution of a majority of the entire Board of Directors, the Board may appoint an executive committee consisting of two or more Directors. The executive committee may exercise all of the powers and authority of the Board of Directors between meetings of the Board, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the

Board of Directors or in the executive committee's own membership. Vacancies in the executive committee shall be filled by the Board of Directors. The executive committee shall meet at stated times or on notice to all of its members by any one of its members. It shall fix its own rules of procedure. Unanimous vote or consent shall be necessary in every case. The executive committee shall keep regular minutes of its proceedings and report those proceedings to the Board of Directors. Without limiting the generality of the foregoing, the executive committee is specifically authorized to execute customary banking resolutions for corporate accounts and for borrowing.

Section 2.11. Additional Committees. By resolution of a majority of the entire Board of Directors, the Board may designate one or more additional committees, each committee to consist of two or more Directors. To the extent provided in the resolution, each committee may exercise all of the powers and authority of the Board of Directors, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the Board of Directors or in the committee's own membership. Vacancies in a committee shall be filled by the Board of Directors. Each committee shall have the name designated from time to time by resolution of the Board of Directors.

Section 2.12. Informal Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 67(b), as from time to time amended.

ARTICLE III OFFICERS

Section 3.1. Election, Tenure, and Compensation. The Officers of the Corporation shall be a President, a Secretary, and a Treasurer. The Corporation shall have such other Officers e.g., one or more Vice Presidents and one or more Assistant Secretaries or Assistant Treasurers as the Board of Directors from time to time considers necessary for the proper conduct of the business of the Corporation. The Officers shall be elected by the Board of Directors and shall serve at the pleasure of the Board. The President shall be a Director; the other Officers may, but need not be, Directors. Any two or more offices, except those of President and Secretary, may be held by the same person; however, no Officer may execute, acknowledge, or verify any instrument in more than one capacity if that instrument is required by law or by these By-Laws to be executed, acknowledged, or verified by two or more Officers. The compensation or salary paid all Officers of the Corporation may be fixed by resolutions of the Board of Directors. Except where otherwise expressly provided in a contract duly authorized by the Board of Directors, all Officers, agents, and employees of the corporation are subject to removal at any time by the Board of Directors and shall hold office at the discretion of the Board of Directors or of the Officers appointing

them.

Section 3.2. Powers and Duties of the President. The President shall be the Chief Executive Officer of the Corporation and shall have general charge and control of all its business affairs and properties. The President shall preside at all meetings of the Stockholders. The President may be a member of the Board of Directors and, if a member, shall preside at all meetings of the Board of Directors unless the Board of Directors, by a majority vote of a quorum of the Board, elects a Chairman other than the President to preside at meetings of the Board of Directors. The President may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. The President shall have the general powers and duties of supervision and management usually vested in the office of president and of corporation. The President shall be an ex-officio voting member of all standing committees. The President shall perform such other duties as from time to time are assigned to the President by the Board of Directors.

Section 3.3 Powers and Duties of the Vice President. The Board of Directors may appoint one or more Vice Presidents. Each Vice President (except as otherwise provided by resolution of the Board of Directors) shall have the power to sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as from time to time are assigned to that Vice President by the Board of Directors or by the President. In case of the absence or disability of the President, the duties of that office shall be performed by a Vice President; the taking of any action by any Vice President in place of the President shall be conclusive evidence of the absence or disability of the President.

Section 3.4 Secretary. The Secretary shall give, or cause to be given, notice of all meetings of Stockholders and Directors and all other notices required by law or by these Stockholders and of the Directors in books provided for that purpose and shall perform such other duties as from time to time are assigned to the Secretary by the Board of Directors or the President. The Secretary shall attest to or witness all instruments executed by or on behalf of the Corporation requiring same. In general, the Secretary shall perform all the duties generally incident to the office of Secretary of a corporation, subject to the control of the Board of Directors and the President.

Section 3.5. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation and shall keep full and accurate account of receipts and disbursements in books belonging to the corporation. The Treasurer shall deposit all of the Corporation's money and other valuables in the name and to the credit of the Corporation in such depository or depositories as from time to time designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as ordered by the Board of Directors, taking proper vouchers for those disbursements. The Treasurer shall render to the President and the board of Directors, whenever either of them so requests, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Directors,

for the faithful performance of the duties of his or her office and for the removal from office, of all books, papers, vouchers, money, and other property belonging to the Corporation, of whatever kind, in his or her possession or under his or her control. In general, the Treasurer shall perform all the duties generally incident to the office of treasurer of a corporation, subject to the control of the Board of Directors and the President.

Section 3.6. Assistant Secretary. The Board of Directors or the President may appoint one or more Assistant Secretaries. Each Assistant Secretary (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Secretary in the absence or disability of the Secretary and shall have such other powers and shall perform such other duties as from time to time are assigned to that Assistant Secretary by the Board of Directors or the President. In case of the absence or disability of the Secretary, the duties of that office shall be performed by an Assistant Secretary; the taking of any action by any Assistant Secretary in place of the Secretary shall be conclusive evidence of the absence or disability of the Secretary.

Section 3.7. Assistant Treasurer. The Board of Directors may appoint one or more Assistant Treasurers. Each Assistant Treasurer (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Treasurer in the absence or disability of the Treasurer and shall have such other powers and shall perform such other duties as from time are assigned to that Assistant Treasurer by the Board of Directors or the President. In case of the absence or disability of the Treasurer, the duties of that office shall be performed by an Assistant Treasurer; the taking of any action by any Assistant Treasurer in place of the Treasurer; the conclusive evidence of the absence or disability of the Treasurer.

Section 3.8. Subordinate Officers. The Corporation may have such subordinate officers as the Board of Directors from time to time deems advisable. Each subordinate officer shall hold office for such period and shall perform such duties as from time to time are prescribed by the Board of Directors, the President, or the committee or officer designated pursuant to this Article.

ARTICLE IV CAPITAL STOCK AND OTHER SECURITIES

Section 4.1. Issue of Certificates of Stock. The certificates for shares of the capital stock of the Corporation shall be of such form, not inconsistent with the Charter of the Corporation, as has been approved by the Board of Directors. All certificates shall be signed by the President or by a Vice President and countersigned by the Secretary or by an Assistant Secretary. Any signature or countersignature may be either manual or facsimile signature. All certificates for each class of stock shall be consecutively numbered. The name and address of the person owning the shares issued shall be entered in the

Corporation's books.

Section 4.2. Transfer of Shares. Shares of the capital stock of the Corporation may be transferred on the books of the Corporation only by the holder of those shares, in person or by his or her attorney in fact, and only upon surrender and cancellation of certificates for a like number of shares. All certificates surrendered to the Corporation for transfer shall be cancelled, and no new certificates representing the same number of shares may be issued until the former certificate or certificates for the same number of shares have been so surrendered and canceled.

Section 4.3. Registered Stockholders. The Corporation is entitled to treat the holder of record of any shares of stock as the holder in fact of those shares. Accordingly, the Corporation is not bound to recognize any equitable or other claim to, or interest in, those shares in the name of any other person, whether or not the Corporation has had express or other notice of that claim or interest, except as expressly provided by the laws of the Territory of the United States Virgin Islands.

Section 4.4. Record Date and Closing of Transfer Books. The Board of Directors may set a record date or direct that the stock transfer books be closed for a stated period for the purpose of making any proper determination with respect to Stockholders, including which Stockholders are entitled to notice of a meeting, vote at a meeting, receive a dividend, or be allotted other rights. The record date may not be more than fifty (50) days before the date on which the action requiring the determination will be taken. The transfer books may not be closed for a period longer than twenty (20) days. In the case of a meeting of Stockholders, the record date or the closing of the transfer books shall be at least ten (10) days before the date of the meeting.

Section 4.5. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate that is alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen, or destroyed. In its discretion and as a condition precedent to the issuance of a new certificate, the Board of Directors may require the owner of the certificate or the owner's legal representative to give bond, with sufficient surety, to indemnify the Corporation against any loss or claim that may arise by reason of the issuance of a new certificate.

Section 4.6. Restrictions on Transfer. Notwithstanding any other provision of these By-Laws to the contrary, no securities issued by the Corporation may be transferred unless (i) those securities are registered with the Securities and Exchange Commission or other jurisdiction, as appropriate, or (ii) the Corporation has received an opinion of counsel for the transferor or transferee, acceptable to counsel for the Corporation, that the transfer would not violate applicable state and federal securities laws, provided, however, that the restrictions set forth in clauses (i) and (ii), above, shall be deemed waived as to a specific transfer of securities in the event the Corporation transfers such securities on its books without having received either evidence of such registration or such opinion of counsel.

ARTICLE V
BANK ACCOUNTS AND LOANS

Section 5.1. Bank Accounts.

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority to deposit any funds of the Corporation in such financial institutions as from time to time have been designated by the Board of Directors. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority to withdraw any or all of the funds of the Corporation so deposited in a financial institution, upon checks, drafts, or other instruments or orders of the payment of money, drawn against the account or in the name or behalf of the Corporation, and made or signed by those designated Officers or agents.

B. From time to time the Corporation shall certify to each financial institution in which funds of the Corporation are deposited, the signatures of the Officers or agents of the Corporation authorized to draw against those funds. Each financial institution with which funds of the Corporation are deposited is authorized to accept, honor, cash, and pay, without limit as to amount, all checks, drafts, or other instruments or orders for the payment of money, when drawn, made, or signed by Officers or agents so designated by the Board of Directors, until the financial institution has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

C. If the Board of Directors fails to designate the persons by whom checks, drafts, and other instruments or orders for the payment of money may be signed, as provided in this Section, all checks, drafts, and other instruments or orders for the payment of money shall be signed by the President or a Vice President and countersigned by the Secretary or Treasurer or by an Assistant Secretary or Assistant Treasurer of the Corporation.

Section 5.2. Loans.

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority (i) to effect loans, advances, or other forms of credit at any time or times for the Corporation, from such banks, trust companies, institutions, corporations, firms, or persons, in such amounts and subject to such terms and conditions, as the Board of Directors from time to time has designated; and (ii) as security for the repayment of any loans, advances, or other forms of credit authorized, to assign, transfer, endorse, and deliver, either originally or in addition or substitution, any or all personal property, real property, stocks, bonds, deposits, accounts, documents, bills, accounts receivable, and other commercial paper and evidences of debt or other securities, or any rights or interests at any time held by the Corporation; and (iii) in connection with any loans, advances, or other forms of credit so authorized, to make, execute, and deliver one or more notes, mortgages, deeds of trust, financing statements, security agreements,

acceptances, or written obligations of the Corporation, on such terms and with such provisions as to the security or sale or disposition of them as those Officers or agents deem proper; and (iv) to sell to, or discount or rediscount with, the banks, trust companies, institutions, corporations, firms, or persons making those loans, advances, or other forms of credit, any and all commercial paper, bills, accounts receivable, acceptances, and other instruments and evidences of debt at any time held by the Corporation, and, to that end, to endorse, transfer, and deliver the same.

B. From time to time the Corporation shall certify to each bank, trust company, institution, corporation, firm, or person so designated, the signatures of the Officers or agents so authorized. Each bank, trust company, institution, corporation, firm, or person so designated is authorized to rely upon such certification until it has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

ARTICLE VI INDEMNIFICATION

Section 6.1. Indemnification to Extent Permitted by Law. The Corporation shall indemnify to the full extent permitted by law any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the person is or was a Director, Officer, employee, or agent of the corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation.

Section 6.2. Payment of Expenses in Advance of Final Disposition of Action. Expenses (including attorneys' fees) incurred in defending a civil, criminal, administrative, or investigative action, suit, or proceeding shall be paid by the Corporation in advance of the final disposition of that action, suit, or proceeding, on the conditions and to the extent permitted by law.

Section 6.3. Non-Exclusive Right to Indemnity; Insurer to Benefit of Heirs and Personal Representatives. The rights of indemnification set forth in this Article are in addition to all rights to which any Director, Officer, employee, agent, trustee, administrator, or other fiduciary may be entitled as a matter of law, and shall continue as to a person who has ceased to be a Director, Officer, employee, agent, trustee, administrator, or other fiduciary, and shall inure to the benefit of the heirs and personal representatives of that person.

Section 6.4. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the

Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation, against any liability asserted against and incurred by that person in any such capacity, or arising out of that person's status as such, whether or not the Corporation would have the power or would be required to indemnify that person against that liability under the provisions of this Article or the laws of this State.

Section 6.5. Certain Persons not to be Indemnified. Notwithstanding the provisions of this Article, the Corporation may not indemnify any bank, trust company, investment adviser, or actuary against any liability which that entity or person may have by reason of acting as a "fiduciary" of any employee benefit plan (as that term is defined in the Employees Retirement Income Security Act, as amended from time to time) established for the benefit of the Corporation's employees.

ARTICLE VII **MISCELLANEOUS PROVISIONS**

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be such as has been duly designated by the Board of Directors.

Section 7.2. Notices.

A. Except as otherwise provided by law or these By-Laws, whenever notice is required by law or these By-Laws to be given to any Stockholder, Director, or Officer, it shall be construed to mean either (i) written notice personally served against written receipt at the address that appears for that person on the books of the Corporation, or (ii) written notice transmitted by mail, by depositing the notice in a post office or letter box, in a post-paid sealed wrapper, addressed to the Stockholder, Director, or Officer at the address that appears for that person on the books of the Corporation or, in default of any other address for a Stockholder, Director, or Officer, at the general post office situated in the city or county of his or her residence, which notice shall be deemed to be given at the time it is thus mailed.

B. All notices required by law or these By-Laws shall be given by the Secretary of the Corporation. If the Secretary is absent or refuses or neglects to act, the notice may be given by any person directed to do so by the President or, with respect to any meeting called pursuant to these By-Laws upon the request of any Stockholders or Directors, by any person directed to do so by the Stockholders or Directors upon whose request the meeting is called.

C. Any Stockholder, Director, or Officer may waive any notice required to be

given under these By-Laws.

Section 7.3. General Counsel. The Board of Directors may appoint a general counsel to have dominion over all matters of legal import concerning the Corporation. It shall be the duty of the Officers and the Directors to consult from time to time with the general counsel (if one has been appointed), as legal matters arise. The general counsel shall be given notice of all meetings of the Board of Directors, in the manner provided in Section 2.5 and 2.6 of the By-Laws, and the general counsel shall be accorded the opportunity to attend these meetings for the purpose of consulting with and advising the Board of Directors on any matters of a legal nature. The general counsel to the Corporation shall be subject to removal and replacement by the Board of Directors.

Section 7.4. Corporate Seal. The Board of Directors may provide a suitable seal, bearing the name of the Corporation, which shall be in the charge of the Secretary. The Board of Directors may authorize one or more duplicate seals and provide for their custody. Regardless of whether a seal is adopted by the Board of Directors, whenever the Corporation is required to place its corporate seal on a document, it shall be sufficient to meet the requirements of any law, rule, or regulation relating to a corporate seal to place the word ("seal") adjacent to the signatures of the person authorized to sign the document on behalf of the Corporation.

Section 7.5. Books and Records. The Corporation shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its Stockholders and Board of Directors and of any executive or other committee when exercising any of the powers or authority of the Board of Directors. The books and records of the Corporation may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form, but may be maintained in the form of a reproduction.

Section 7.6. Bonds. The Board of Directors may require any Officer, agent or employee of the Corporation to give a bond to the Corporation, conditioned upon the faithful discharge of his or her duties, with such surety and in such amount as is satisfactory to the Board of Directors.

Section 7.7. Severability. The invalidity of any provision of these By-Laws shall not affect the validity of any other provision, and each provision shall be enforced to the extent permitted by law.

Section 7.8. Gender. Whenever used in these By-Laws, the masculine gender includes all genders.

ARTICLE VIII **AMENDMENTS**

The Board of Directors has full power and authority to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual, regular, or special meeting a part of the general business of that meeting subject to the power of the Stockholders to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual meeting as part of the general business of that meeting, or at any special meeting for which the notice of that special meeting stated the substance of the proposed amendment, alteration, supplement, or repeal.



EXHIBIT C

**DEPARTMENT OF CONSUMER AFFAIRS
PRINT-OUT WITH A LIST OF CORPORATE
OFFICERS**

Control #: 30805

Business Information

Organization Type: CORPORATION
 Business Name: PLESSEN ENTERPRISES, INC.
 Business Phone: 340 778-6240
 Business EIN: [REDACTED]

Contact First Name: WALLEED
 Last Name: HAMED
 Phone #: 340-690-9395
 Email: WALLY@PLAZAEXTRA.COM
 Fax: 340 778-1200

Physical Address

Street1: #14 EST. PLESSEN
 Street2:
 City: FREDERIKSTED
 State: VI ZIP: 00840
 Island: ST. CROIX
 Country: US VIRGIN ISLANDS

Mailing Address

Street1: P.O. BOX 763
 Street2:
 City: CHRISTIANSTED
 State: VI ZIP: 00821
 Island: ST. CROIX
 Country: US VIRGIN ISLANDS

Person Information

Person 1:

First Name: MAHER
 Last Name: YUSUF
 Date of Birth: 04/28/1967

Physical Address

Street1: #14 ESTATE PLESSEN
 Street2:
 City: F'STED
 State: VI ZIP: 00851
 Island: ST. CROIX
 Country: UNITED STATES

Country of Citizenship: USA

Position/Title: DIRECTOR
 Place of Birth: JORDAN
 SSN: [REDACTED]

Mailing Address

Street1: P.O. BOX 3649
 Street2:
 City: F'STED
 State: VI ZIP: 00851
 Island: ST. CROIX
 Country: UNITED STATES

Have you ever been convicted of a felony or crime involving moral turpitude? N
 If YES, explain the nature of the crime, date of conviction, and place of conviction:

Person 2:

First Name: WALEED
 Last Name: HAMED
 Date of Birth: 01/22/1962

Physical Address

Street1: 4 C & D ESTATE SION FARM
 Street2:
 City: CHRISTIANSTED
 State: VI ZIP: 00821
 Island: ST. CROIX
 Country: US VIRGIN ISLANDS

Country of Citizenship: USA

Position/Title: VICE PRESIDENT
 Place of Birth: JORDAN
 SSN: [REDACTED]

Mailing Address

Street1: P.O. BOX 763
 Street2:
 City: CHRISTIANSTED
 State: VI ZIP: 00821
 Island: ST. CROIX
 Country: US VIRGIN ISLANDS

Have you ever been convicted of a felony or crime involving moral turpitude? N
 If YES, explain the nature of the crime, date of conviction, and place of conviction:

Person 3:

First Name: MOHAMMAD
 Last Name: HAMED
 Date of Birth: 02/17/2011

Physical Address

Street1: 6F & H CARLTON
 Street2:

Position/Title: PRESIDENT
 Place of Birth: JORDAN
 SSN: [REDACTED]

Mailing Address

Street1: P.O. BOX 763
 Street2:

4

2



22



7

4

1



4

1

3

1

4

1

2



11

6

2

1

City: CHRISTIANSTED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS
Country of Citizenship: USA

City: CHRISTIANSTED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Have you ever been convicted of a felony or crime involving moral turpitude? N
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Person 4:

First Name: FATHY
Last Name: YUSUF
Date of Birth: 04/15/1941
Physical Address
Street1: #26A TUTU PARK MALL
Street2:
City: ST. THOMAS
State: VI ZIP: 00802
Island: ST. THOMAS
Country: UNITED STATES
Country of Citizenship: USA

Position/Title: TREASURER
Place of Birth: JORDAN
SSN: [REDACTED]
Mailing Address
Street1: #26A TUTU PARK MALL
Street2:
City: ST. THOMAS
State: VI ZIP: 00802
Island: ST. THOMAS
Country: UNITED STATES

Have you ever been convicted of a felony or crime involving moral turpitude? N
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Location Information

Location 1:

Physical Address
Street1: #14 EST. PLESSEN
Street2:
City: FREDERIKSTED
State: VI ZIP: 00840
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Mailing Address
Street1: P.O. BOX 763
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Do you have employee(s) at this location? N Trade Name/DBA: PLESSEN ENTERPRISES, INC.
Explain in detail the type of proposed business activity for which the license(s) (has/have) been requested.
RETAIL INVESTMENT/PROPERTY LEASE

Location 2:

Physical Address
Street1: #6&9 EST. THOMAS
Street2:
City: ST. THOMAS
State: VI ZIP: 00802
Island: ST. THOMAS
Country: US VIRGIN ISLANDS

Mailing Address
Street1: P.O. BOX 763
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Do you have employee(s) at this location? N Trade Name/DBA: PLESSEN ENTERPRISES, INC.
Explain in detail the type of proposed business activity for which the license(s) (has/have) been requested.
RENTAL OF REAL PROPERTY OTHER THAN BUILDINGS

License Information

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Handwritten text block in the lower section, containing more entries.

Handwritten text block in the lower section, possibly a summary or conclusion.

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Location	License Type	Issue Date	Expire Date	Status	Fee Amount
#14 EST. PLESSEN, FREDERIKSTED,VI,00840					
#6&9 EST. THOMAS, ST.THOMAS,VI,00802	RENT OF REAL PROPERTY OTHER THAN BUILDINGS (PLESSEN ENTERPRISES, INC.)	01/01/2013	01/31/2014	PENDING	130.00
Total Amount:					130.00

Payment Information

Billing Information

First Name: WALEED	Street1: P.O. BOX 24363
Last Name: HAMED	Street2:
Card Type: VISA	City: CHRISTIANSTED
Credit Card Number: XXXX-XXXX-XXXX	State: VI ZIP: 00824
Expiration Date: 10/2014	Island: ST. CROIX
Country: US	

BIR Information

First Name: WALEED	Relationship: VICE PRESIDENT
Last Name: HAMED	

EXHIBIT D

CHECK NO. 0376

Scotiabank Web

Document Information

Document Type:	Cheque Image	Date Processed:	03/27/2013
Transit Number:	30585	Cheque Serial Number:	0000376
Account Number:	45012	Amount:	(\$460,000.00)

Image: <<< >>> ZoomIn ZoomOut Back Next

0376
101-600-218

PLESSEN ENTERPRISES, INC.
P.O. BOX 763
C'STEQ., VI 00921

30585-002 045

PAY TO THE ORDER OF Waleed Hamed \$460,000.00

four hundred sixty thousand

THE BANK OF NOVA SCOTIA
MAR 27 2013

045 30585-002

Scotiabank
THE BANK OF NOVA SCOTIA
FOR DEPOSIT ONLY

FOR: [Redacted]

[Signature]

OK Print

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Document Information

Document Type:	Cheque Image	Date Processed:	03/27/2013
Transit Number:	30585	Cheque Serial Number:	0000376
Account Number:	45012	Amount:	(\$460,000.00)

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DO NOT SIGN - WRITING START BELOW THIS LINE

FOR DEPOSIT ONLY

OK Print

Local intranet

13 APR 16 AM 28



EXHIBIT

B

NOTICE OF DEPOSITING FUNDS IN ESCROW WITH THE CLERK OF THE COURT

Case
Hamed v. United
and Yusuf
• Exhibit
B

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

YUSUF YUSUF, derivatively on behalf
of PLESSEN ENTERPRISES, INC.,

Plaintiff,

v.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED
and FIVE-H HOLDINGS, INC.

Defendants,

and

PLESSEN ENTERPRISES, INC.

Nominal Defendant.

Case No.:SX-13-CV-120

CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF


JURY TRIAL DEMANDED

13 APR 19 PM 09

NOTICE OF DEPOSITING FUNDS IN ESCROW WITH THE CLERK OF COURT

COME NOW the individual defendants named in this case (Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed) by counsel and hereby give notice of depositing Two Hundred Thirty Thousand dollars \$230,000 with the Clerk of the Court (see **Exhibit A**), which represents 50% of the funds in the account of the Plessen Enterprises, Inc. at issue, which is the maximum possible amount due the shareholders bringing this derivative lawsuit. The amount retained by these defendants represents the amount due the Hamed family as 50% shareholders in Plessen Enterprises, Inc. from the total amount of funds in the account in dispute.

Dated: April 19, 2013



Joel F. Holt, Esq.
2132 Company Street
Christiansted, VI 00820
(340) 773-8709
holtvi@aol.com

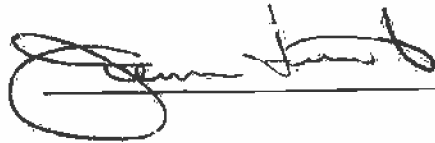
CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2013, I served a copy of the foregoing by hand on:

Nizar A. DeWood, Esq.
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

And mailed to:

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



A handwritten signature in black ink, appearing to read "Joseph A. DiRuzzo, III", is written over a horizontal line. The signature is cursive and includes a large loop at the beginning.

GOVERNMENT OF THE VIRGIN ISLANDS

SUPERIOR COURT
ST. CROIX DIVISION

No. 049070

ST. CROIX, V.I.

RECEIVED FROM			CASE OR PROCEEDING		
WALEED HAMED			YUSUF YUSUF OBO PLESSEN ENTERPRISES, I VS. WALEED HAMED, HISHAM HAMED, ET AL		
DATE	CASE NO.	CODE	ORIGINAL AMOUNT	AMOUNT RECEIVED	BALANCE DUE
4/19/13	CV 120/13	4	230,000.00	230,000.00	0.00

CK#-103119000007469

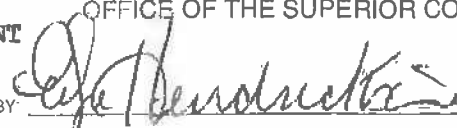
CODES:

1. SUPPORT
2. BOND
3. EXECUTION
4. MISC.

INTEREST BEARING ACCOUNT

OFFICE OF THE SUPERIOR COURT

BY



IN THE SUPERIOR 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.

CIVIL NO. SX-12-CV-370

**DEFENDANTS' EMERGENCY MOTION FOR RECONSIDERATION OF
PRELIMINARY INJUNCTION ORDER AND FOR STAY OF SAME PENDING
POSTING OF ADEQUATE BOND**

Defendants hereby move, on an *emergency* basis, for reconsideration of the Court's April 25, 2013 Memorandum Opinion and Order (the "Preliminary Injunction Order") on Plaintiff's January 19, 2013 Emergency Motion and Memorandum to Renew Application for TRO, and for a temporary stay of the Preliminary Injunction Order pending Plaintiff's posting of an adequate bond.¹

Introduction

Trial courts should err on the *high side* when setting the amount of a security bond. Here, however, the current bond of \$25,000 was arbitrarily set without any discussion or argument on the bond issue during the January 25 and 31, 2013 preliminary injunction hearings or otherwise. Indeed, the meager bond clearly cannot satisfy its primary purpose, *i.e.*, "to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained," Fed. R. Civ. P. 65(c), which costs in this action exceed **\$80 million**, including the \$68 million net equity of Defendant United Corporation d/b/a Plaza Extra, whose assets and operations have been usurped by the

¹ This motion addresses the legal insufficiency of the current bond only, and otherwise is made without waiver of any of Defendants' arguments that the Preliminary Injunction Order was wrongfully issued. Defendants' undersigned counsel received notice of the entry of the Order via an e-mail from the Court dated April 30, 2013.

Preliminary Injunction Order and whose continued existence has been placed in serious jeopardy. Nor does the Preliminary Injunction Order presently require that the bond be held in an interest-bearing account until the entry of final judgment.

Accordingly, as addressed in greater detail below, Defendants respectfully request that this Court forthwith schedule a bond hearing to determine a legally sufficient bond amount to be posted by Plaintiff in an interest-bearing account prior to the effective date of any interlocutory injunction order; or, in lieu of a bond hearing, rely upon the damages figure offered herein by Defendants, *i.e.*, \$80 million, as the sufficient bond amount.

Relevant Background²

A. The Current Security Bond

1. The January 25 and 31, 2013 hearings on Plaintiff's underlying preliminary injunction motion were devoted to the merits of Plaintiff's extraordinary and drastic request for equitable relief.

2. Significantly, the issue of a bond, including the costs and damages that Defendants would sustain if wrongfully enjoined, was never discussed or argued during the merits-based hearings or otherwise.

3. Notwithstanding, in granting the injunction, this Court set "a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00)" absent any factual findings or other record evidence regarding Defendants' respective costs and damages if an injunction were wrongfully issued. (Preliminary Injunction Order at 23).

² The Preliminary Injunction Order sets forth additional factual findings as gleaned, almost exclusively, from Plaintiff's one-sided proposed factual findings and conclusions of law. The Order otherwise makes no attempt to distinguish or even discuss the factual findings and conclusions of law that Defendants proposed in their post-hearing submissions. The Order likewise was entered prior to a resolution of Defendants' November 5, 2012 Renewed Motion to Dismiss.

4. Similarly, although the Preliminary Injunction Order provides that “Plaintiff’s interest in [United Corporation d/b/a Plaza Extra’s] ‘profits’ accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined,” that “security” is illusory. Indeed, upon a finding that Defendants were wrongfully enjoined and, necessarily, that United Corporation alone owns full interest in the accounts held in its name, Plaintiff would own no interest in those accounts. In other words, Plaintiff’s alleged interest in the accounts held at Banco Popular Securities cannot somehow serve as “additional security” because, *if Plaintiff is found not to own any interest in those accounts*, that “additional security” would be zero. Thus, upon a finding that Defendants were wrongfully enjoined, they would be limited to the meager \$25,000 bond.

5. Further, although a bond is the only source of Defendants’ recovery if found to have been wrongfully enjoined, the Court did not concurrently direct that the instant bond amount actually reflect the “additional security” suggested in the Preliminary Injunction Order.

6. Nor does the current \$25,000 bond reflect any attempt to ensure that the value of United Corporation d/b/a Plaza Extra’s assets encumbered bear some reasonable relationship to (a) Plaintiff’s expected recovery in this action or (b) as noted, Defendants’ *respective* costs and damages resulting from the current injunction.

B. Defendants’ Costs and Damages

7. Although the Preliminary Injunction Order endeavors “to preserve the status quo of the parties,” the Order in fact does the exact opposite – it turns the status quo on its head. (Preliminary Injunction Order at 22).

8. Specifically, disregarding the undisputed hearing testimony, the Preliminary Injunction Order gives rise for the first time to a crippling corporate deadlock “affecting the

management, employees, methods, procedures and operations” of the Plaza Extra stores based on the directive that the Hameds and Yusufs now “jointly manag[e] each store.” (*Id.* at 23).

9. This directive purports to usurp the ultimate decision-making authority that Defendant Fathi Yusuf has exercised since he incorporated United Corporation in 1979 (*id.* at 3), began building the first of its three supermarkets (*id.*), and thereafter has managed and been in charge of all of the three stores through the present – *as even Plaintiff and his own witnesses do not dispute.* (*See, e.g.*, Jan. 25, 2013 Hr’g Tr. at 201:4 (Mohammad Hamed conceding, during his direct testimony, that “Mr. [Fathi] Yusuf he is in charge for everybody”), 201:23-24 & 210:21-23 (Mohammad Hamed acknowledging, again, that Fathi Yusuf is in “charge” of “all the three store[s]”); Jan. 25, 2013 Hr’g Tr. at 26:14-15 & 100:2-3 (Waleed Hamed conceding that Fathi Yusuf is and always has been ultimately responsible for the entire office operations of United Corporation d/b/a Plaza Extra), Jan. 25, 2013 Hr’g Tr. at 105:12-15 (Waleed Hamed reaffirming that Fathi Yusuf is the only individual who has the “ultimate call” relating to the supermarket operations, including to ultimately resolve any disagreements between the respective co-manager employees at the stores)).

10. The Preliminary Injunction Order’s incredible overhaul of ultimate decision-making regarding the stores’ operations – *i.e.*, from the parties’ longstanding *prior regime* since 1979 of Fathi Yusuf as the ultimate decision-maker and tie-breaker to the Court’s judicially-imposed *new regime* of “joint management” based on a preliminary record – threatens the very existence of United Corporation d/b/a Plaza Extra and of the Plaza Extra stores.

11. The Preliminary Injunction Order also usurps the finances of United Corporation d/b/a Plaza Extra, based on the directives that “[n]o funds will be disbursed from [United’s] supermarket operating accounts without the mutual consent of Hamed and Yusuf” and that “[a]ll

checks from all Plaza Extra Supermarket operating accounts will require two signatures,” one from each family. (*Id.* at 23).

12. These directives, among other injury to Defendants, likewise threaten United Corporation’s continued existence, and also purport to relieve Plaintiff from his obligation to pay certain rent owed to United.

13. Further, the directives materially impact United Corporation’s obligations in various pending criminal and civil legal proceedings in which it is a party.

14. Thus, given the unprecedented restraints in the Preliminary Injunction Order, Defendants – and each of them – will sustain significant costs and damages complying with the Order. Those costs and damages include, at a minimum:

(a) the earnings that the injunction presently directs be paid to certain employees, including four Hamed employees and Wadda Charriez, irrespective of Defendants’ ultimate consideration of whether those employees, among others, should remain employed through the entry of a final judgment in this action;

(b) the outstanding rent owed by Plaintiff for the lease of the Sion Farm Plaza Extra Supermarket through the entry of a final judgment in this action;

(c) Defendants’ costs, including attorneys’ fees, incurred in complying with the present injunction order through the entry of a final judgment in this action;

and, perhaps most importantly,

(d) the net equity of United Corporation, whose assets and operations, as noted, have been completely usurped from it.

15. With respect to the forced earnings component of the present injunction and assuming that a final judgment on the merits will not be entered in this action for another two years, *i.e.*, until May 2015, the combined earnings of the Hameds who are employed at the supermarket stores, together with the earnings of Wadda Charriez, from May 2013 through May 2015, is

\$2,866,442.00. (*See* May 8, 2013 Declaration of John Gaffney at ¶ 5 (attached as Exhibit “A” hereto)).

16. With respect to the unpaid rent damages arising from the injunction, Plaintiff's continued failure to account for various lease obligations at the Sion Farm Plaza Extra Supermarket currently includes \$9,012,759.50 in outstanding rent owed to United Corporation d/b/a Plaza Extra. (*See* Gaffney Decl. at ¶¶ 8-9).

17. With respect to the compliance component of the injunction, Defendants' estimated costs, including attorneys' fees, incurred in complying with the injunction are \$380,000-\$625,000. (*See* May 8, 2013 Declaration of Nizar A. DeWood at ¶ 13 (attached as Exhibit “B” hereto)).

18. Lastly, with respect to the value of United Corporation d/b/a Plaza Extra and its supermarket stores, whose continued existence the injunction has seriously jeopardized, the present net equity of United Corporation exceeds \$68,000,000.00. (*See* Gaffney Decl. at ¶ 10).

19. In sum, Defendants' out-of-pocket compliance costs and potential damages as a result of the instant injunction total more than **\$80 million**.

20. As discussed below, Defendants should be fully protected against those costs and damages in the event the Preliminary Injunction Order should not have been imposed – and the current \$25,000 bond does not satisfy that purpose and thus is legally inadequate.

Argument

A. Legal Standards

“The purpose of the bond requirement is to protect the enjoined party in the event the injunction should not have been imposed.” *See Howmedica Osteonics v. Zimmer, Inc.*, 461 Fed. Appx. 192, 198 (3d Cir. 2012) (vacating trial court's grant of preliminary injunction where, among other reasons, court failed to conduct a “full hearing” on the bond requirement). Thus, although a trial

court has equitable discretion to set the amount of a bond securing the issuance of a preliminary injunction, such security must reflect “the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). The trial court also must “ensure that the value of assets encumbered b[ear] some reasonable relationship to the likely amount of [the movant]’s expected recovery.” See *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 189 (3d Cir. 1990) (“agree[ing] with defendants that the injunction suffers at least one fatal defect: the [trial] court made no attempt to ensure that the value of assets encumbered bore some reasonable relationship to the likely amount of plaintiffs’ expected recovery” and thus “conclud[ing] that the preliminary injunction *must be set aside*”) (emphasis added). See also *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883, 887 (7th Cir. 2000) (advising trial courts, in advance of preliminary injunction hearings, to “notify the parties of the ground rules and endeavor to set bonds at levels reflecting *full consequences*”) (emphasis added).

“[T]he posting of adequate security is a ‘condition precedent’ to injunctive relief.” *Scanvec Amiable Ltd. v. Chang*, 80 Fed. Appx. 171, 176 (3d Cir. 2003) (citations omitted). Further, the text and policies of Rule 65(c) are interpreted “very strictly.” *Hoxworth*, 903 F.2d at 210. See also *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, No. 3:06-CV-1105, 2011 U.S. Dist. LEXIS 119438, at *9-10 (M.D. Pa. Oct. 17, 2011) (“The Third Circuit strictly interprets the security bond requirement of Rule 65(c).”). Indeed,

[t]here are important policies undergirding a strict application of the bond requirement . . . *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 805-06 n.9 (3d Cir. 1989). An incorrect interlocutory order may harm defendant and a bond provides a fund to use to compensate incorrectly enjoined defendants. *Id.* at 804. Such protection is important in the preliminary injunction context, for because of attenuated procedure, an interlocutory order has a higher than usual chance of being wrong. *Id.* (citation omitted).

Hoxworth, 903 F.2d at 210 (internal quotation omitted). “Plaintiffs too derive some protection from the bond requirement, for defendants injured by wrongfully issued preliminary injunctions can recover only against the bond itself.” *Id.* at 210 n.31 (citing *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 770 (1983)).

“Very strict” application of the bond requirement fulfills an additional key purpose: to deter “rash applications” for preliminary relief by causing plaintiffs to “think carefully beforehand.” *Id.* at 211 (citing *Instant Air Freight*). *See also Howmedica*, 461 Fed. Appx. at 198 (“The bond serves to inform [plaintiffs] of the price they can expect to pay if the injunction was wrongfully issued.”) (citation and quotation omitted); *Mead Johnson*, 201 F.3d at 888 (“Shifting back to the plaintiff the complete injury occasioned by the errors that sometimes occur when preliminary relief is issued after an abridged judicial inquiry will hold in check the incentive [plaintiffs] have to pursue [preliminary injunctive] relief”); *Zambelli Fireworks Mfg. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010) (“The requirement of security is rooted in the belief that a defendant deserves protection against a court order granted without the full deliberation a trial offers.”).

Accordingly, trial courts “**should err on the high side**” when setting the amount of a security bond under Rule 65(c). *Mead Johnson*, 201 F.3d at 888 (emphasis added). As the court explained in *Mead Johnson*,

[i]f the [trial] judge had set the bond at \$ 50 million, as [defendant] requested, this would not have entitled [defendant] to that sum; [defendant] still would have to prove its loss *An error in setting the bond too high thus is not serious.* . . . Unfortunately, an error in the other direction produces irreparable injury, because the damages for an erroneous preliminary injunction cannot exceed the amount of the bond.

Id. (emphasis added) (citations omitted). *See also Arlington*, 2011 U.S. Dist. LEXIS 119438, at *9-16 (holding it would be “manifestly unjust” to maintain a bond at below 100% “of the damages [the enjoined party] will purportedly suffer should the preliminary injunction be deemed erroneous”).

Trial courts also **should hold a “full hearing”** on the bond requirement when, as here, the initial preliminary injunction hearing was “devoted to the merits of that request, rather than to fixing the amount of bond.” *Mead Johnson*, 201 F.3d at 887. *See also Zambelli*, 592 F.3d at 426 (noting that Rule 65(c) “does not impose any obligation on the parties to seek a bond” at the initial preliminary injunction hearing on the merits); *H.I. Constr., LLC v. Bay Isles Assocs., LLLP*, 53 V.I. 206, 223 (Terr. Ct. 2010) (clarifying that trial court “is *unable to impose a reasonable bond* as required as part of an order for injunctive relief” absent testimony on the Rule 65(c) considerations, including the enjoined party’s financial ability) (emphasis added); *Howmedica*, 461 Fed. Appx. at 198 (remanding matter for “full hearing on the [bond] issue” where the issue was not addressed at the initial preliminary injunction hearing); *Deborah Heart and Lung Center v. Children of the World Foundation*, 99 F. Supp. 2d 481, 495 (D.N.J. 2000) (scheduling, at the conclusion of preliminary injunction hearing on the merits, a separate “bond hearing” to determine appropriate bond requirement); *EH Yacht, LLC v. Egg Harbor, LLC*, 84 F. Supp. 2d 556, 573 (D.N.J. 2000) (ordering separate bond hearing “for a determination of appropriate security to be posted pending further proceedings,” and ordering that injunction order “be temporarily stayed and be[] effective as of the plaintiff’s posting of a bond” as determined after the bond hearing); *Doebler’s Pennsylvania Hybrids, Inc. v. Doebler*, No. 4:CV-03-1079, 2003 U.S. Dist. LEXIS 27098, at *4 (M.D. Pa. Oct. 15, 2003) (granting motion for reconsideration to “schedule[] a hearing to address the amount and nature of the security for the injunction,” which matters were not addressed at the initial hearing on the merits).

Lastly, because “the only recourse for a defendant wrongfully enjoined is against the security bond,” trial courts in this context **should “retain the security bond in an interest-bearing account until the entry of final judgment.”** *Arlington*, 2011 U.S. Dist. LEXIS 119438, at *16-17 (granting enjoined party’s motion for reconsideration to “modify [the court’s initial preliminary injunction order] and direct the Clerk of Court to retain the security bond in an interest-bearing account until the entry of final judgment”). Indeed, retention of the bond in an interest-bearing account until the entry of final judgment is advisable because “recovery under the security bond is triggered only after final judgment on the merits in favor of the enjoined party.” *Id.* at *17 (citing *Clark v. K-Mart Corp.*, 979 F.2d 965, 969 (3d Cir. 1992) and *Am. Bible Soc’y v. Blount*, 446 F.2d 588, 594-95 & n.12 (3d Cir. 1971)).

Where a trial court fails to comply with the foregoing legal standards, a motion for reconsideration is appropriate “to correct clear error or prevent manifest injustice.” LRCi 7.3. *See also Arlington*, 2011 U.S. Dist. LEXIS 119438, at *6-7 (“The purpose of a motion for reconsideration is to . . . correct manifest errors or law or fact” and “[t]he court [also] possesses inherent power to reconsider its interlocutory orders when it is consonant with justice to do so”) (citation omitted); Fed. R. Civ. P. 60(b)(6) (allowing relief from an order for any “reason that justifies relief”).

B. Reconsideration is Warranted in This Action

In the present action, the Court did *not* “err on the high side” when setting the current bond amount of \$25,000; did *not* hold a “full hearing” on the bond requirement, as the initial preliminary injunction hearings were devoted to the merits of the underlying injunction request; and did *not* direct that the bond be held in an interest-bearing account until the entry of final judgment on the merits. Based on the authority cited herein, those failures collectively, and each of them individually, constitute clear error and would lead to manifest injustice if not remedied. *See, e.g., Arlington*, 2011

U.S. Dist. LEXIS 119438, at *9-16 (holding it would be “erroneous” and “manifestly unjust” to set bond at any amount below the full damage figure an enjoined party purportedly would suffer; increasing initial bond of 25% of the defendant’s suggested damages figure to 100% of the suggested figure).

Alternatively, the Court may dispense with the bond hearing by relying upon the damages figure suggested by Defendants in this motion. *See, e.g., Arlington*, 2011 U.S. Dist. LEXIS 119438, at *12-13 (noting that the court therein “specifically relied upon [the enjoined party]’s calculation of lost profits, which was asserted by [the party]’s counsel”); *Christiana Indus. Inc. v. Empire Elecs., Inc.*, 443 F. Supp. 2d 870, 884 (E.D. Mich. 2006) (granting emergency motion for reconsideration to increase bond amount from \$100,000 to \$2.5 million where “Plaintiff d[id] not contest the amount presented by Defendant as its potential loss”); *Merry Maids, L.P. v. WWJD Enters., Inc.*, No. 8:06CV36, 2006 U.S. Dist. LEXIS 49788, at *8 (D. Neb. July 20, 2006) (adopting “figure suggested by the defendants” as bond amount where “the matter of the security required by Rule 65(c) was not discussed or argued at the time of the hearing”). Towards that end, Defendants’ potential loss as a result of being wrongfully enjoined or restrained in this action is \$80 million, comprising the net value of United Corporation and the other costs and damages set forth herein, which amount Plaintiff should be required to post with the Court as security in an interest-bearing account until final judgment. *See, e.g., Mead Johnson*, 201 F.3d at 887 (expressing “concern” over \$1 million bond that failed to adequately consider the defendant’s *full* out-of-pocket compliance costs and potential loss of market share as a result of the injunction, which costs defendant estimated to be \$21.8 million); *Stonder v. Mc&A Tech., Inc.*, No. 09-4113, 2010 U.S. Dist. LEXIS 85616, at *9 (D. Kan. Aug. 19, 2010) (including income, *i.e.*, base salary plus commissions, as bond component); *Scanvec*, 80 Fed. Appx. at 178 (including “expenses” incurred in complying with injunction as bond component).

Conclusion

For the foregoing reasons, Defendants pray that the Court, on an emergency basis, enter an Order (a) scheduling a bond hearing to determine the legally sufficient security to be posted pending further proceedings or, alternatively, adopting the damages figure suggested by Defendants in this motion, *i.e.*, \$80 million, as the sufficient security bond; (b) directing Plaintiff to post the amended security with the Clerk of the Court in an interest-bearing account until the entry of final judgment; (c) staying any preliminary injunction order until Plaintiff's such posting of the amended security and notice to the Court thereof; and (d) granting any additional relief deemed to be just under the circumstances.

Respectfully submitted,

May 9, 2013

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-and-



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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.



Nizar A. DeWood, Esq.

IN THE SUPERIOR 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.)
_____)

CIVIL NO. SX-12-CV-370

EXHIBIT "A" – May 8, 2013 Declaration of John Gaffney

(in support of Defendants' May 8, 2013 *Emergency* Motion for Reconsideration of Preliminary Injunction Order and For Stay of Same Pending Posting of Adequate Bond)

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

MOHAMMAD HAMED, by his authorized
agent WALEED HAMED,

Plaintiff,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CASE # SX-12-CV-370

DECLARATION OF JOHN GAFFNEY

I, John Gaffney, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by United Corporation d/b/a Plaza Extra in a controller capacity.

2. The statements in this declaration are based on my personal knowledge and my review of United Corporation d/b/a Plaza Extra's business records, as those records are kept and maintained in the regular course of business and upon which records I rely as part of my regular duties. If called as a witness, I could and would testify competently to the facts set forth in this declaration.

3. United Corporation d/b/a Plaza Extra presently employs, and pay salaries to, four members of the Hamed family in the supermarket stores at issue in this litigation as follows, in relevant part:

Name	Store	Position	2012 Annual Earnings (Basic Salary + Bonus + Vacation)
Waleed Hamed	St. Croix East	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Mufeed Hamed	St. Croix East	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Hisham Hamed	St. Croix West	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Waheed Hamed	St. Thomas	Manager	\$347,000 (286,000 + 50,000 + 11,000)

4. United Corporation d/b/a Plaza Extra also employs and pays a salary to Wadda Charriez, who is an accounting supervisor at the St. Croix East store, as follows, in relevant part:

Name	2012 Annual Earnings (Hourly @ \$12/hr + Overtime + Bonus + Vacation)
Wadda Charriez	\$45,221 (24,960 + 14,864 + 4,500 + 897)

5. Assuming that a final judgment in this action on the merits will not be entered for another two years, *i.e.*, until May 2015, and assuming that the foregoing salaries remain constant

through that date, the combined salaries of Waleed Hamed, Mufeed Hamed, Hisham Hamed, Waheed Hamed and Wadda Charriez to be paid by United Corporation d/b/a Plaza Extra to those employees from May 2013 through May 2015 is \$2,866,442.

6. Plaintiff Mohammad Hamed's last rent payment to United Corporation d/b/a Plaza Extra for the lease at the Sion Farm Plaza Extra East supermarket was made on or about February 7, 2012, in the amount of \$5,408,806.74 for the period May 2004 through December 2011.

7. Additional rent for the Plaza Extra East store remains unpaid and is due and owing to United Corporation d/b/a Plaza Extra.

8. Specifically, with respect to the areas referred to by the parties as "Bay No. 1," "Bay No. 5," and "Bay No. 8" of the Plaza Extra East store:

- a. \$3,967.894.19 is owed for Bay No. 1 from January 1, 1994, through April 4, 2004;
- b. \$243,904.00 is owed for Bay No. 5 from May 1, 1994, through October 31, 2001; and
- c. \$381,250.00 is owed for Bay No. 8 from April 1, 2008, through May 30, 2013;

for a combined amount as of those dates of \$4,593,048.19

9. Separately, as of May 1, 2013, Plaintiff Mohammad Hamed owes to United Corporation d/b/a Plaza Extra \$4,419,711.31 in outstanding rent, including base rent and late fees, for the lease at the Sion Farm Plaza Extra supermarket from January 1, 2012, through May 1, 2013.

10. As of December 31, 2011, the net equity of United Corporation d/b/a Plaza Extra exceeds \$68 million.

I declare under penalty of perjury, on this 8th day of May, 2013, that the foregoing is true and correct.



JOHN GAFFNEY

**IN THE SUPERIOR 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.)
_____)

CIVIL NO. SX-12-CV-370

EXHIBIT "B" – May 8, 2013 Declaration of Nizar DeWood

(in support of Defendants' May 8, 2013 *Emergency* Motion for Reconsideration of Preliminary
Injunction Order and For Stay of Same Pending Posting of Adequate Bond)

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

MOHAMMAD HAMED, by his authorized
agent WALEED HAMED,

Plaintiff,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CASE # SX-12-CV-370

DECLARATION OF NIZAR A. DeWOOD

I, Nizar A. DeWood, pursuant to 28 U.S.C. § 1746, declare as follows:

1. This declaration is based on my personal knowledge and, if called as a witness, I could and would testify competently to the statements herein.
2. I am the founding partner of the DeWood Law Firm, which is Defendants' co-counsel in this action.
3. I am a member in good standing of the Virgin Islands Bar Association and I have been a member of that bar since November 2010.
4. I have worked on various matters in this action since its inception and I am familiar with the filings therein, including the Court's April 25, 2013 Memorandum Opinion and Order (the "Preliminary Injunction Order") on Plaintiff's January 19, 2013 Emergency Motion and Memorandum to Renew Application for TRO.
5. I likewise am familiar with Defendant's *Emergency* Motion for Reconsideration of Preliminary Injunction Order and for Stay of Same Pending Posting of Adequate Bond, which has been filed concurrently herewith without waiver of any arguments that the Order was wrongfully issued.
6. This Court, on a preliminary record, has questioned whether United Corporation d/b/a Plaza Extra remains a viable corporate entity vis-à-vis its supermarket operations or is "distinct" from the Plaza Extra operations (Preliminary Injunction Order at 7); and, independently, has found that Mohammad Hamed has a present ownership interest in United Corporation's supermarket profits dating back to the 1980s (*id.* at 16-17).
7. The Court thus has directed, among other things, that "[n]o funds will be disbursed from [United Corporation d/b/a Plaza Extra's] supermarket operating accounts without the mutual

consent of [Mohammad] Hamed and [Fathi] Yusuf” and that “[a]ll checks from all Plaza Extra Supermarket operating accounts will require two signatures,” one from each family. (*Id.* at 23).

8. Related to those directives, United Corporation d/b/a Plaza Extra and/or its officers and directors are currently a party in numerous pending criminal and civil actions in the Virgin Islands, including the following:

Action
United States of America and Government of the Virgin Islands v. Government of the Virgin Islands v. United Corporation d/b/a Plaza Extra, <i>et al.</i>
Edwards v. United Corporation d/b/a Plaza Extra
Fell v. United Corporation d/b/a Plaza Extra
Gilbert v. United Corporation, Inc. d/b/a Plaza Extra
Hartzog v. United Corporation d/b/a Plaza Extra
Hay v. United Corporation d/b/a Plaza Extra
Jackman v. United Corporation d/b/a Plaza Extra
Javois v. United Corporation
Melendez v. Mike Yusuf, <i>et al.</i>
Pemberton v. United Corporation d/b/a Plaza Extra
Philip v. United Corporation d/b/a Plaza Extra
Powell v. United
Samuel v. United Corporation d/b/a Plaza Extra
Santiago v. United Corporation d/b/a Plaza Extra (West)
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited (Light Poles)
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited
Williams v. United Corporation d/b/a Plaza Extra
Yarwood v. United Corporation, Inc. d/b/a Plaza Extra Supermarket

9. With respect to the criminal action identified on the first line above, the Preliminary Injunction Order purports to require Defendants to do the following, without limitation:

- a. move to vacate the current plea, which is premised upon the Hameds’ affirmative representations to the District Court that United Corporation d/b/a Plaza Extra alone owned and operated the three Plaza Extra supermarket stores during the relevant periods; and that the tax obligations of United Corporation, United Corporation’s shareholders, the individual defendants in the Criminal Action and any related entities and individuals for supermarket profits and other such taxable monies were properly calculated based on United Corporation’s status as a “C” or “S” corporation, as opposed to the partnership alleged in this action, which partnership this Court has acknowledged for the first time in its supposed 30-year history; and
- b. seek from Mohammad Hamed indemnification for all taxes, fines and other penalties that United Corporation d/b/a

Plaza Extra already has paid, for which liabilities this Court now has determined Mohammad Hamed to be jointly and/or severally liable.

Defendants estimate such compliance costs, including the attorneys' fees necessarily related thereto, to be \$75,000-\$100,000.

10. As to the 17 remaining above-referenced civil actions, based on the unique circumstances of each of those cases, the Preliminary Injunction Order purports to require Defendants to do the following in compliance thereof, including, but not limited to:

- a. obtain the Hameds' consent to continuation of each of the subject lawsuits;
- b. obtain the Hameds' consent to the continued retention of United Corporation's respective counsel in each of the subject lawsuits;
- c. revise every existing engagement letter between United Corporation and its respective counsel to incorporate this Court's findings and conclusions of law in the Preliminary Injunction Order, including, but not limited to, Mohammad Hamed alleged interest in the Plaza Extra profits and liability for same;
- d. draft, file and serve notices in each of the subject lawsuits notifying all parties of Mohammad Hamed's joint and several liability for any awards or orders in those lawsuits, including any damage claims against United Corporation d/b/a Plaza Extra; and
- e. prepare and execute indemnification agreements in each of the subject lawsuits to be executed by Mohammad Hamed for indemnification of United Corporation d/b/a Plaza Extra's expenses, including attorneys' fees and adverse damages judgments, in the lawsuits.

Defendants estimate such compliance costs, including the attorneys' fees necessarily related thereto, to be \$15,000-\$25,000 for *each* of the subject civil actions, *i.e.*, \$255,000-\$425,000.


11. The attached letter dated May 8, 2013 from one of United Corporation's current attorneys in certain of the pending actions referenced above highlights the issues in this context. (*See* May 8, 2013 Letter from Carl A. Beckstedt, III, Esq. (attached as Exhibit 1 hereto)).

12. Further, the Court's findings and conclusions of law in the Preliminary Injunction Order establish the basis for certain counter-claims in this action against Mohammad Hamed, including, but not limited to, reimbursement for all costs and damages that Fathi Yusuf and/or United Corporation d/b/a Plaza Extra has paid during the period of the alleged partnership absent

Mohammad Hamed's attendant liability for same as an alleged "partner" in the supermarket operations. Defendants estimate the costs of preparing and filing those counter-claims, including the attorneys' fees necessarily related thereto, to be \$50,000-\$100,000.

13. In sum, the total compliance component of the costs and damages that Defendants' now face as addressed herein based on the Preliminary Injunction Order is \$380,000-\$625,000.

I declare under penalty of perjury that the foregoing is true and correct on this 8th day of May, 2013.



NIZAR A. DeWOOD

EXHIBIT 1

(in support of May 8, 2013 Declaration of Nizar A. DeWood)

Beckstedt & Associates



2162 Church Street • Christiansted, VI 00820 • 340-719-8086 • 800-886-6831 (fax)

Attorneys at Law

May 8, 2013

Via US Mail & Email to mike@plazaextra.com

Mr. Fathi Yusuf
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Via U.S. Mail & Email to mike@plazaextra.com

Mr. Mike Yusuf
President
United Corporation
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Via U.S. Mail & Email to wally@plazaextra.com

Mr. Mohammad Hamed
c/o Mr. Wally Hamed, his authorized agent
Plaza Extra
P.O. Box 763
Christiansted, VI 00820

Re: Plaza Extra Litigation

Gentlemen:

I am in receipt of Wally's May 3, 2013 email requesting a status on all Plaza Extra litigation and copies of Judge Brady's Orders and Memorandum Opinion dated April 25, 2013, in the matter of *Mohammed Hamed v. Fathi Yusuf and United Corporation*, SX-12-CV-370 (the "Litigation"). I am also in receipt of Wally's letter of today's date indicating that the Hamed interests in Plaza Extra want me to continue as counsel in all litigation for the Plaza Extra Supermarkets that I am currently handling. Wally also advises that they make no claim as to the corporate operation of the shopping plaza or the rentals therefrom.

Attached is a list of the cases involving Plaza Extra Supermarket litigation which I am currently defending. (I note that in two cases I am appointed directly by the insurers, ACE and Admiral. Also, as to the cases covered by First Mercury, while they remain under the Self Insured Retention at this time, I am approved panel counsel once they exceed retention.) Note one of the cases is against Mike Yusuf, individually, however, it is my opinion that this matter clearly arises out of his managerial position at Plaza Extra West and is related to the supermarket

Fathi Yusuf
Mike Yusuf
Wally Hamed
May 8, 2012
Page 2

business. Indeed, coverage has been accepted by First Mercury under the insurance coverage for the store.

At a very minimum, Judge Brady's Order suggests that my client in these matters is the Yusuf/Hamed partnership, not United Corporation. It is my opinion that, in view of this Order, I cannot ethically proceed to represent the defendants in these actions without confirmation as to my retention by Fathi Yusuf, Mohammed Hamed (through Wally Hamed as his authorized representative) and United Corporation (as named defendant in all but one of these cases). I also need clear and agreed instruction as to invoicing, the person or persons to whom I am to report and the person or persons from whom I am to receive authorization/approval on litigation matters.

Assuming that all parties agree to continue my retention and defense of these cases and can also agree on a method of instruction for my services, then I can prepare an Engagement Letter for signature that embodies that consent and agreement. Given that there are many matters that need immediate attention, I recommend that this issue be resolved as soon as possible.

Thank you for your quick response.

Very truly yours,



Carl A. Beckstedt III, Esq.

CAB:jlz

PENDING PLAZA EXTRA SUPERMARKET LITIGATION

MATTER	CARRIER
Edwards, Sonia v. United Corporation d/b/a Plaza Extra	No suit filed
Fell, Isaline v. United Corporation d/b/a Plaza Extra	First Mercury Insurance Company
Gilbert, Felicite v. United Corporation, Inc., d/b/a Plaza Extra	
Hartzog, Amanda individually and as Next of Friend of Jahmil Perez, a minor v. United Corporation d/b/a Plaza Extra	
Hay, Carol L. v. United Corporation d/b/a, Plaza Extra	First Mercury
Jackman, Francis v. United Corporation d/b/a Plaza Extra	
Javois, Kyshama and Ferdinand Javois as parents of Kai Javois, a minor v. United Corporation	No suit filed
Melendez, Carlos, Jr. v. V.I. Asphalt Products Corporation (VIAPCO) and Mike Yusuf	First Mercury Insurance Company
Pemberton, Rita v. Plaza Extra Supermarket and United Shopping Plaza	
Phillip, Nelda P. v. United Corporation d/b/a Plaza Extra	Admiral Insurance
Powell, Paula v. United	No suit filed
Samuel, Velma v. United Corporation d/b/a Plaza Extra	ACE Global Solutions
Santiago, Jacqueline v. United Corporation d/b/a Plaza Extra (West)	
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited (Light Poles)	
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited	
Williams, Edith v. United Corporation d/b/a Plaza Extra	
Yarwood, Christie v. United Corporation, Inc., d/b/a Plaza Extra Supermarket	First Mercury

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

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants.

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

DEFENDANTS' MOTION TO
RECONSIDER AND TO MODIFY
PRELIMINARY INJUNCTION ORDER TO
TERMINATE EMPLOYEES MUFEED
HAMED, WALEED HAMED, AND WADDA
CHARRIEZ

**DEFENDANTS' MOTION TO RECONSIDER AND TO MODIFY PRELIMINARY
INJUNCTION TO TERMINATE EMPLOYEES MUFEED HAMED, WALEED HAMED,
AND WADDA CHARRIEZ**

Defendants respectfully file this Memorandum of Law in Support of their Motion to Modify the Court's April 25th, 2013 Order to terminate the employment of employees Mufeed Hamed, Waleed Hamed, and Wadda Charriez for insubordination, conversion, defalcation, and other employee misconduct.

INTRODUCTION

On April 25th, 2013, this Court issued a Preliminary Injunction Order, which provides, *inter alia*, other things:

ORDERED that the "operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representatives, and Yusuf, or his designated representatives, jointly managing each store, without unilateral action by either party, or representatives affecting the managing, **employees**, methods, procedures and operations.

Presumably, any action Defendants desire to undertake regarding the employment of any employee of Defendant United, including the termination of Waleed Hamed and Mufeed Hamed requires a Motion to Modify the April 25th, 2013 Preliminary Injunction Order. In this case, Defendants United and Yusuf seek the termination of the aforementioned employees as a result of various work related misconduct. Most importantly, the Court should reconsider its Preliminary Injunction Order because it is legally inconsistent and substitutes the Courts judgment for that of the Officers and Directors of United¹. See *Browne v. Ritchie*, 559 N.E.2d 808 (Ill. 1990), attached as EXHIBIT E. First, the Court makes the finding that the purported partnership between Plaintiff Hamed and Defendant Yusuf is an at-will partnership. Then the Court takes notice of a Dissolution Notice sent by Defendant Yusuf's counsel on March 13, 2012. Since the notice of dissolution legally terminates the Court's purported at-will partnership, the Court's Preliminary Injunction forcing the parties to continue to jointly manage a terminated partnership is legally invalid. *Id.*

Because of this legal inconsistency and in light of the facts outlined below, the court should grant this Motion and vacate its Preliminary Injunction order. Significantly, in its Findings of Facts & Conclusion of Law, the Court failed to discuss the effects of the dissolution notice upon the validity of the purported at-will partnership. Defendants submit that well-settled legal principles require that the Court vacate its Preliminary Injunction order, and amend its finding of facts and conclusion of law to reflect the real current status of the parties.

¹The Business Judgment rule “prevents the courts from “injecting themselves into a management role for which they were neither trained nor competent.” See, *Weiss v. Temporary Inv. Fund*, 692 F.2d 928, 941 (3d Cir.1982) (internal citation omitted)(quoting Duesenberg, *The Business Judgment Rule and Shareholder Derivative Suits: A View from Inside*, 60 Wash.U.L.Q. 311, 314 (1982)(“Duesenberg”)(emphasis added)).

I. BACKGROUND

A. Facts

1. On September 17th, 2012, Plaintiff Mohammed Hamed (“Hamed”) filed the instant civil action seeking to establish a partnership between Mohammed Hamed and Fathi Yusuf (“Yusuf”). In addition to the Amended Complaint, Plaintiff filed a Motion for Temporary Restraining Order/or Preliminary Injunction. Plaintiff renewed same on January 8th, 2013, citing the pending termination of employee Wadda Charriez.
2. Defendants argued that while Mohammed Hamed is entitled to 50% of the profits of the operations of the Plaza Extra Supermarkets pursuant to an oral agreement entered into in 1986 with Defendant Fathi Yusuf, United Corporation remained a separate legal entity and is owned by the Yusuf family in various percentage shares.
3. Plaintiff’s Amended Complaint never sought to pierce the corporate veil of Defendant United, nor has there been any testimony, evidence, or exhibits to demonstrate why Defendant United’s corporate structure should not be respected.
4. On April 25th, 2013, the Court granted Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction. The Court found a likelihood of Plaintiff prevailing on the merits concerning the existence of a partnership between Plaintiff Hamed and Defendant Yusuf. The Court further found that under Virgin Islands law, there is no distinction between a “joint venture” and a “partnership.” *Memorandum Opinion, Conclusions of Law* ¶ 8.
5. The Court then cited among others, a **dissolution notice** dated March 13, 2012 where Defendant Yusuf sought to dissolve the “partnership.” *Memorandum Opinion, Conclusions of Law* ¶10.

6. The Court judicially noticed Defendant Yusuf's intent to terminate the "partnership" in his March 13th, 2012 letter to Plaintiff Hamed as proof of the existence of a partnership, and its subsequent termination. *TRO Findings of Facts* ¶10.
7. Plaintiff Hamed testified that the party's intent under the profit sharing agreement was that Defendant Yusuf is in "charge of all three stores." *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit B**.
8. Plaintiff Hamed testified that he "cannot do nothing" in the stores since 1996 because of his illness, and then subsequent retirement. *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit B**.
9. Despite Defendant's Dissolution Notice and termination of any purported partnership, the Court issued a Preliminary Injunction requiring the parties to continue to operate the terminated at-will partnership and jointly manage the operations of the Plaza Extra Stores.
10. Since March 4th, 2013, the closing date for the submission of briefs in the TRO matter, new facts arose making management of the Plaza Extra Operations impossible. The facts underlying each employee's misconduct are fully outlined below according to each of the employees covered herein.

Mufeed Hamed

11. Mufeed Hamed is one of Plaintiff Mohammed Hamed's sons, and has been employed by United Corporation as a co-manager at the Plaza Extra Supermarket – East store.
12. On March 27th, 2013 Mufeed Hamed, along with his brother Waleed Hamed, signed and executed a check in the amount of \$460,000 payable to Waleed Hamed drawn on

an account from Plessen Enterprise, Inc. ("Plessen"). See Check No. 376 attached as **Exhibit A.**

13. Plessen is a duly organized Virgin Islands real estate holding company, and is owned in equal shares between the Yusuf and Hamed families. The unauthorized check effectively reduced Plessen's operating account to almost zero as to cause Plessen to become unable to meet its immediate short term obligations, including but not limited to paying the property taxes immediately due for the year 2011.

14. This type of conduct not only is criminal but demonstrates employee Mufeed Hamed's lack of loyalty and diligence in matters relating to custody of funds. As such, an appropriate civil suit has been filed, captioned as *Yusuf Yusuf v. Waleed Hamed, Mufeed Hamed, et al., Case No. SX-13-CV-120* to vindicate Plessen's interest as well as those of its shareholders. The Complaint, ¶25 through ¶36 provides the following:

- ¶25 On or about March 27th, 2013 Plaintiff YUSUF paid with his personal credit card the 2011 property taxes of PLESSEN.

- ¶26 YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

- ¶27 However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made payable YUSUF would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

- ¶28 Specifically, on March 27, 2013, Defendant WALEED HAMED [and MUFEED HAMED], without authorization, issued check number 0376 on a PLESSEN checkbook, in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

- ¶29 Defendants WALEED HAMED [and MUFEED HAMED] endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in WALEED HAMED’s personal bank account.
- ¶30 Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile

- ¶31 Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.
- ¶32 As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.
- ¶33 Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.
- ¶34 Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, which acts were not, and could not have been, the product of a good faith exercise of business judgment.
- ¶35 Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.
- ¶36 All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

See Complaint, *Yusuf v. Waleed Hamed, Mufeed Hamed, et al.*, attached as **Exhibit A**.

13. This action is currently pending before the Superior Court, St. Croix Division. As a shareholder of Plessen, Defendant Fathi Yusuf's position and interest in Plessen has been materially affected by the conduct of employee Mufeed Hamed.

14. Defendant Yusuf, whether as a shareholder of United Corporation, or a purported partner in a partnership called the Hamed and Yusuf partnership has every right to terminate the employment of an employee who has signed without authorization a draft check for over \$460,000 from Plessen in collusion, be it an employee of United Corporation or the purported partnership of Hamed & Yusuf.

Waleed Hamed

15. Incorporating the above allegations, co-defendant Waleed Hamed has been equally culpable in the misconduct as outlined in the case of *Yusuf v. Waleed Hamed, et al.* However, the misconduct of Waleed Hamed goes much farther. In a separate civil action, *United Corporation v. Waleed Hamed, SX-13-CV-02*, Defendant United outlines disturbing facts of employee misconduct, defalcation, embezzlement, and other misconduct as demonstrated below in ¶¶18 to 28 of the Complaint:

¶18. During a search of the documents and files delivered by the U.S. Government, Plaintiff United reviewed documents comprising tax returns for Defendant Hamed. An examination of Defendant Hamed's tax returns revealed the following significant assets:

- i. **Tax Year 1992 (Stocks & Investments) ...\$ 408,572.00**
- ii. **Tax Year 1993 (Stocks & Investments) ...\$7,587,483.00**

¶19. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Defendant Hamed through his unlawful access to monies and other properties belonging to Plaintiff United. Defendant Hamed never held any other employment since 1986, other than through his employment with Plaintiff United.

¶20. Defendant Hamed also never had any other significant source of income, business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

¶21. The income tax returns for the years 1992 and 1993 reflect substantial assets that upon information and belief derived from the unlawful conversion and unauthorized access to funds and monies belonging to Plaintiff United. Plaintiff United never provided Defendant Hamed remuneration of more than \$35,000 for a yearly salary.

¶22. In 1993, Defendant Hamed's personal income tax return showed a loss of \$394,382.00. Plaintiff United, through its Treasurer, inquired of Defendant Hamed where he obtained the money in 1992 to sustain a personal loss of \$394,000 in his equity portfolio.

¶23. Defendant Hamed replied that the significant stocks listed in the schedules attached to his joint tax return was that of "Hamdan Diamond" – an unrelated corporation - that the Certified Public Accountant that had prepared Defendant Hamed's 1993 income tax return had made a "mistake" and that Defendant Hamed "would get to the bottom of it."

¶24. To date, Defendant Hamed has offered no evidence of the "mistake" he claimed was attributed to the Certified Public Accountant.

¶25. Further, upon information, such losses were unlikely to be a "mistake" because Defendant Hamed "carried forward" those losses on his personal income tax returns through 1999.

¶26. An examination of Defendant Hamed's personal tax returns revealed that Defendant Hamed's stock purchases between 1991 and 1996 totaled more than \$7 Million.

¶27. In October of 2011, a review of the U.S. Government records and files further revealed the following defalcation of funds:

- a. Loans totaling \$430,500.00, approved by Defendant Hamed, presumably repaid to Defendant Hamed.
- b. Payments made with respect to the construction of Defendant Hamed's home amounting to \$481,000.00.
- c. Six checks totaling \$135,000, drawn on the operating account of Plaintiff United's Plaza Extra supermarket, and made payable to "Waleed Hamed" personally.

¶28. To this date, Defendant Hamed refuses to explain and account for any of the aforementioned funds.

See Complaint, *United v. Waleed Hamed*, attached as **Exhibit B**.

16. In response to the complaint, employee Waleed Hamed filed a motion to dismiss on grounds of statute of limitations. To date, employee Waleed Hamed has failed to provide Defendant United Corporation or Defendant Fathi Yusuf with an explanation concerning the funds listed in the foregoing complaint.

Wadda Charriez

17. Wadda Charriez commenced employment with United Corporation in 1998, and then was assigned the duties of office manager. On January 8th, 2013, after an investigation, United Corporation sought the termination of Wadda Charriez. The facts underlying the termination are as stated in the case of *United v. Wadda Charriez*, ¶¶8 through 22:

¶8. Plaintiff United is the employer of Wadda Charriez, who began her employment on January 5th, 1998 as a cashier. Thereafter, Defendant Charriez eventually became an office manager was assigned the duties of preparing and issuing payroll checks.

¶9. Plaintiff United utilizes a hand recognition payroll system where every employee must scan his or her right hand to "punch-in" and "punch-out" each day.

The system marks the entry and exit times for each employee, and tabulates the exact number of hours worked.

¶10. The system then automatically feeds the payroll system with time information obtained from each employee's hand scan.

¶11. Any print out or payroll report from the payroll system shows the date and time the hand was scanned. However, if an employee manually enters the entry and exit times, any printout of that employee's time sheets will show an asterisk next to the manually overridden time.

¶12. This time entry by way of hand recognition procedure is required for all hourly wage based employees. Of all the hourly based employees, Defendant Charriez, by virtue of her payroll responsibilities, has manually overridden the payroll system virtually every single time.

¶13. There is only one explanation as to why Defendant Charriez's timesheets would show consistent manual time entries: to report false hours and to cause the payroll system to issue overstated wage paychecks.

¶14. On April 29th, 2013, Plaintiff United Corporation terminated Defendant Wadda Charriez for reporting false hours causing Plaintiff United monetary losses of \$39,699 dollars.

¶15. Upon information, Defendant Charriez reported false hours for the years 2006 through 2009, the records of which are being collected and analyzed.

¶16. For the years 2010 through 2012, Defendant Charriez reported the following total false hours:

i. Year 2010	786 hours @ \$15.50 = \$12,969
ii. Year 2011	832 hours @ \$18.00 = \$14,976
iii. Year 2012	615 hours @ \$18.00 = <u>\$11,754</u>
	\$39,699

¶17. Plaintiff United warned Wadda Charriez on January 8th, 2013 of Plaintiff's [United's] intent to terminate her should she fail to explain why Defendant Charriez falsely reported such significant hours, and worse kept all of the proceeds she derived from her wages.

¶18. Plaintiff United provided Defendant Charriez over 120 days to explain her false reporting of work hours.

¶19. On April 29th, 2013, Defendant Charriez's employment was terminated. Employee Charriez never returned any of the monies she received as a result of her false hours, and never explained the reasons for her misconduct.

¶20. As an office manager, and an employee tasked with properly preparing, reporting, and issuing payroll checks for United's employee, Defendant Charriez violated her at-will employment agreement with United Corporation.

¶21. As an employee of Plaintiff United, Defendant violated her duties of loyalty and care owed to her employer Plaintiff United.

¶22. As a result of obtaining \$39,699 dollars in unauthorized and illegal compensation, Defendant Charriez caused Plaintiff United substantial monetary damages.

See Complaint, *United v. Charriez*, ¶¶8-22, attached as **Exhibit C**.

Defendants now move the Court for an Order permitting the termination of employees Mufeed Hamed, Waleed Hamed, and Wadda Charriez. Since this court in its Preliminary Injunction Order made a preliminary finding of the likelihood of the existence of a partnership, and has implicitly disregarded the corporate structure of United Corporation, Defendants file this Motion to Modify the April 25th, 2013 Preliminary Injunction Order. Because Defendants have good cause for the termination of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez, based on facts arising after the conclusion of the hearings and brief submissions on March 4th, 2013, the attached Motion should be granted.

II. ISSUES

1. Whether the Court should modify the April 25th, 2013 Temporary Restraining Order to permit the termination of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez?
2. Assuming the existence of the Hamed & Yusuf partnership, whether Defendant Fathi Yusuf as the managing partner has the right to terminate the employment of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez?

III. ARGUMENTS

A. The Court Should Reconsider its Preliminary Injunction Order Because the Dissolution Notice Provided to Mohammed Hamed Terminated the At-Will Partnership on March 13th, 2012, and by Operation of Well-Settled Principles of Law Preclude the Court from Ordering the Parties to Continue Co-Managing an Already Terminated Partnership-At-Will.

Before addressing Defendants' request to Modify the Preliminary Injunction, Defendants submit that the Court should reconsider and vacate its Order dated April 25th, 2013 Preliminary Injunction for the following reasons:

1. The Court noted that Defendant Fathi Yusuf provided a notice of dissolution on March 13th, 2012 to Plaintiff.
2. Plaintiff's counsel has repeatedly stated that the dissolution notice was evidence of a partnership; so much so that the Plaintiff virtually recites the terms of that notice in each pleading, motion, and correspondence to third parties. In effect, Plaintiff cites the specific provisions of the dissolution as proof of Defendant Fathi Yusuf's view that the "joint venture" is a partnership.

3. Since Plaintiff does not dispute receipt of such notice, the dissolution notice has effectively terminated the purported “at-will partnership” between Defendant Yusuf and Plaintiff Hamed. It is well established that a partnership-at-will ceases to exist upon notice by a partner of his intent to dissolve it. See, *Browne v. Ritchey*, 202 Ill.App.3d 137,141, 598 N.E.2d 808, 811 (1990), attached as *Exhibit E*. See also, *Smith v. Robson*, 286/96, 2001 WL 1464773 (Terr. V.I. June 26, 2001) (recognizing that under Virgin Islands law “Partnerships and joint ventures without fixed terms are deemed to be “at will” subject to dissolution by either partner at any time.”)
4. The *Browne* court dealt with an at-will-partnership which was properly terminated by defendant partner when he sent a telegram to plaintiff partner stating his intent to dissolve partnership. The *Browne* Court noted that since the defendant partner acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, grant of preliminary injunction requiring him to continue in that relationship was an abuse of discretion. See, *Brown*, 202 Ill. App. 3d at.141, 598 N.E.2d at 811.
5. The State of Illinois which has adopted the Uniform Partnership Act, also recognizes the same Preliminary Injunction requirements in the Virgin Islands. In *Browne*, the Illinois Supreme Court, marrying the preliminary injunction requirements with the partnership law regarding dissolution arrived at the following precise and relevant holding:

With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships [] are subject to dissolution at any time by the express will of any partner. (*Maimom v.*

Telman (1968), 240 N.E.2d 652; 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving partner need do is give notice of his intent to dissolve the partnership to his co-partners. *Id.* (citations omitted).
See, *Brown*, 202 Ill. App. 3d at 141, 598 N.E.2d at 811.

The *Browne* court then held “there is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a *dissolution at the election of one of the partners* is not a breach of contract and the dissolving partner incurs no liability regardless of his motive or any injury to his co-partners “who neglected to protect themselves by an agreement to continue for a definite term.” *Id* at 811.

Here, this Court made the following finding of fact:

“Thereafter, **discussion commenced** initiated by Yusuf’s counsel regarding the “**Dissolution of Partnership.**” *Pl. Ex. 10, 11, 12.* On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties’ relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl. Ex. 12.* Settlement discussion followed those communications but have not to date resulted in an agreement.

Memorandum Opinion, Findings of Facts, p.9, ¶30. (Emphasis Supplied).

Here, as in *Browne*, this Court specifically found that the termination of the “partnership” occurred on March 13th, 2012 by way of a “Dissolution Notice”; further, though unsigned, the Dissolution Notice contained an agreement as to the scope and terms of the “partnership.” This notice of dissolution effectively terminates any purported partnership the parties may have had. With the partnership terminated, the court cannot now issue a preliminary injunction order demanding that the parties maintain the same joint management of operations because there are no continuing operations to manage. Moreover, such an Order re-writes and expands the terms of the

purported partnership, because Mohammed Hamed testified that under the terms of the agreement as understood by him, he never had the right to co-manage the operations of the supermarkets.

Here, Plaintiff Hamed cannot have it both ways: Plaintiff Hamed cannot use a partnership dissolution notice as proof of the existence of an at-will partnership, and simultaneously ignore its terminative effect upon the partnership. Plaintiff's request for continued joint management seeks a remedy that is unavailable by operation of law, since the claimed "partnership" was effectively dissolved, continues only until the completion of the winding up of partnership affairs. See, e.g., *In re Hunt's Pier Associates*, 162 B.R. 442, 451-52 (E.D. Pa. 1993) aff'd, 31 F.3d 1171 (3d Cir. 1994) (under the Uniform Partnership Act, a partnership upon dissolution continues only for the limited purpose of the winding up of partnership affairs.)

Thus, any request for an injunction to maintain the continued joint management of a partnership or joint venture that has been terminated cannot be entertained at this point. The partnership has now entered a phase of dissolution, and the court must reconsider its Order as it is *void ab initio*.

B. Standard of Review: Modifying Preliminary Injunction Orders

A court can modify a preliminary injunction order for reasons of equity in light of changes in the facts or for any other good reason. *Loudner v. U.S.*, 200 F.Supp. 2nd 1146, 1148 (D. S.D. 2002). As the Ninth Circuit explained, "[a] district court has inherent authority to modify a preliminary injunction in consideration of new facts." *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir.2002) (citing *Sys. Fed'n No. 91, Ry. Employees' Dep't v. Wright*, 364 U.S. 642, 647-48, 81 S.Ct. 368, 5 L.Ed.2d 349 (1961); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir.1963)).

In the Third Circuit, modification of preliminary injunction is proper only when there has been change of circumstances between entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable....*Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000).

Because of changed factual circumstances, mainly the wrongful conduct of employees Mufeed Hamed, Waleed Hamed and Wadda Charriez, this court may conduct a hearing to determine if “change of circumstances” has occurred between the entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable.

C. Defendant Yusuf has the right to terminate any employee of the alleged “partnership” because under the undisputed terms of that agreement he is the managing partner, with ultimate decision-making authority.

The Uniform Partnership Act, pursuant to Title 26 of the Virgin Islands Code, states that, except as otherwise provided, the partnership agreement governs relations among the partners and between the partners and the partnership. Partners may agree, therefore, that one or more of them will have exclusive control over the management of the partnership business, so that a managing partner, a committee of managing partners, a designated number of named partners, senior partners, or voting partners can be given the exclusive control of the partnership business. It is well established that Defendant Fathi Yusuf is the person with final authority for all management decisions, including but not limited the hiring and termination of employees. During the January 25th, 2013 hearing, Plaintiff Mohammed Hamed testified that Defendant Fathi Yusuf was “in charge of all three stores” and that he is “in charge of everybody.” This was demonstrated by the following testimony:

A. Mr. Fathi the one. He in charge for it.

Q. What other stores is Mr. Fathi in charge of?

A. For all the three store.

Q. That's all I have, sir. Thank you.

A. You're welcome.

January 25th, 2013 TRO Hearing 210 21-24, attached as EXHIBIT B. (*Emphasis Supplied*).

Further, Plaintiff Mohammed Hamed testified that Defendant Fathi Yusuf was in charge of everyone as shown below:

Q. And who is your oldest son? Who is your oldest son?

A. Mr. Yusuf he is in charge for everybody.

January 25th, 2013 TRO Hearing p. 201:2-5, attached as EXHIBIT C. (*Emphasis Supplied*).

There can be no doubt that whatever entity the Court deems to exist at this stage, only Defendant Fathi Yusuf has full and final authority and power to manage every aspect of the Plaza Extra stores. This is the agreement that even Plaintiff Hamed concedes has always existed between the parties from the beginning. Therefore, consistent with his powers and duties of a purported general manager, Defendant Yusuf is entitled to have employees terminated at will, for cause or no cause, so long as the termination is not against public policy. Here, three employees have engaged in fraud, defalcation of funds, and conversion. Defendants are entitled to terminate their employees forthwith.

Last but not least, Plaintiff Hamed testified that he was incapable of managing the affairs of the partnership, forcing him to provide a Power of Attorney to his son Waleed Hamed as demonstrated by Mohammed Hamed's testimony below:

A. Yes. **I'm his partner, not my son.**

Q. And if Mr. -- If Fathi Yusuf has something to talk to you about the partnership, he is to talk to you, correct?

A. Yes.

Q. And nobody else?

A. Nobody else. If I die or I -- after I give my son the power of attorney, yes, he could because I'm not working. **I getting old. I can't do nothing.**

January 25th, 2013 TRO Hearing 210:1, attached as **Exhibit C**.

Mohammed Hamed testified that “*I getting old can't do anything*” in terms of managing the three plaza extra stores. This in turn creates a serious problem concerning the day to day management that the court ordered in its April 25th, Preliminary Injunction Order. At this point, there is a purported partner, Mohammed Hamed who can no longer do anything. Yet he places a designee whose **personal** interests are in direct conflict with Defendant Fathi Yusuf, whether as a purported partner or as the shareholder and treasurer of United Corporation. Plaintiff Hamed has been retired since 1996, and has indicated clearly that he “cannot do nothing.” The power to manage a partnership is not a delegable power that a partner can simply assign to another person without the express consent of the other managing partner.

Here, Waleed Hamed has been asked to explain how he acquired millions of dollars' worth of securities listed in detailed fashion in his 1992 and 1993 Tax Returns. Defendant Hamed not only refuses to provide an explanation to his employer, but has taken it upon himself to defend his position by filing procedural defenses. To expect a managing partner to co-manage an operation with someone he views as having defalcated substantial assets from the operations of the Plaza Extra Stores is untenable, and cannot be the subject of a preliminary injunction. Such an Order

constitutes a usurpation of the Management authority of an officer of an entity and “inject[s]” this Court “into a management role” which the business judgment rule, plainly prohibits. See, e.g., *Weiss v. Temporary Inv. Fund*, 692 F.2d 928, 941 (3d Cir.1982) (internal citation omitted)(quoting Duesenberg, *The Business Judgment Rule and Shareholder Derivative Suits: A View from Inside*, 60 Wash.U.L.Q. 311, 314 (1982)

D. CONCLUSION

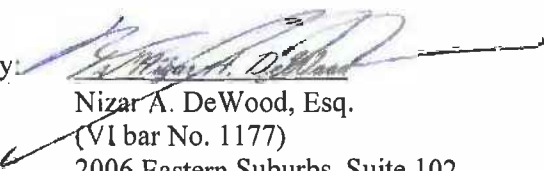
Defendant United may terminate employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez. The grounds for termination are set out clearly in each civil action before the court, and are therefore proper basis for termination. Even where this court makes the preliminary finding of a partnership, Defendant Fathi Yusuf still has the power and right to terminate employees who have engaged in misconduct. Plaintiff Mohammed has made clear that he “cannot do nothing” in reference to his ability to manage any of the affairs of the partnership or joint venture. This has been the case for the last 17 years. Plaintiff Mohammed Hamed’s proposed designees are now engaged in numerous civil actions with the Defendants. Because the Court is now forcing Defendant Fathi Yusuf to maintain a working relationship with Plaintiff Hamed’s proposed designees who have engaged in various misconduct, the Court should immediately reconsider its April 25th, 2013 Preliminary Injunction Order. As such, the Court should grant this Motion to Modify the Preliminary Injunction Order, and allow Defendant Yusuf to exercise his full rights, whether as the sole general managing “partner” or as a corporate officer of United Corporation.

Date: May 8th, 2013

Respectfully Submitted,

DEWOOD LAW FIRM
Attorneys for Plaintiffs

By:


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2013, I caused a true and exact copy of the foregoing Motion To Amend Judgment to Terminate Employees and Proposed Order to be served on counsel for the Plaintiff at the below address.

Joel H. Holt
Law Office of Joel H. Holt
2132 Company Street
Christiansted, VI 00820

/s/ Nizar A. DeWood

Nizar A. DeWood

EXHIBIT

A

Complaint

Yusuf v. Waleed Hamed, Mufeed Hamed

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

YUSUF YUSUF, derivatively on behalf of
PLESSEN ENTERPRISES, INC.,

Plaintiff,

vs.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
FIVE-H HOLDINGS, INC.,

Defendants,

-and-

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

'13 116 1 21

CASE # SX-13-CV-_____

CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff YUSUF YUSUF ("YUSUF"), by and through his undersigned counsel, derivatively on behalf of PLESSEN ENTERPRISES, INC. ("PLESSEN"), and as a shareholder of PLESSEN, hereby files this Verified Complaint against Defendants WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED (collectively, the "INDIVIDUAL DEFENDANTS"), and FIVE-H HOLDINGS, INC. ("FIVE-H"), and against Nominal Defendant PLESSEN, and alleges:

I. BACKGROUND

1. Plaintiff YUSUF brings this shareholder derivative action on behalf of PLESSEN against a member and officer of PLESSEN's Board of Directors (the "Board") and others, including certain shareholders of PLESSEN, to remedy, among other things, the fraudulent misappropriation of PLESSEN's assets, including the recent unauthorized transfer by WALEED HAMED of approximately \$460,000 from PLESSEN's bank accounts, representing approximately 99 percent

(99%) of the monies in those accounts, for the benefit of the INDIVIDUAL DEFENDANTS as well as FIVE-H; breach of fiduciary duties; corporate waste; conversion; unjust enrichment; civil conspiracy; and other relief, including the imposition of a constructive trust and an accounting, and other preliminary and permanent injunctive relief.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has jurisdiction over this action pursuant to 4 VIC § 76(a).
3. Venue is proper in this district pursuant to 4 VIC § 78(a).
4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff YUSUF is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
6. Defendant WALEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
7. Defendant WAHEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
8. Defendant MUFEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
9. Defendant HISHAM HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
10. Defendant FIVE-H is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.
11. Nominal Defendant PLESSEN is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

IV. FACTS COMMON TO ALL COUNTS

PLESSEN

12. PLESSEN was formed in December 1988. A copy of PLESSEN's Articles of Incorporation is attached as Exhibit "A" hereto. PLESSEN adopted By-Laws on or about April 30, 1997, a copy of which is attached as Exhibit "B" hereto.

13. PLESSEN's original Board was comprised of the following individuals: Mohammed Hamed, Defendant WALEED HAMED and Fathi Yusuf. See Exhibit "A" at p. 3.

14. After PLESSEN's formation, an additional seat on the Board was created.

15. The current members of PLESSEN's Board are: Mohammed Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf. Attached as Exhibit "C" hereto is a report from the Virgin Islands Department of Licensing and Consumer Affairs that lists Maher Yusuf as a Director of PLESSEN.

16. PLESSEN's current Officers are: Mohammed Hamed (President), Defendant WALEED HAMED (Vice President) and Fathi Yusuf (Treasurer and Secretary). See Exhibit "A" at p. 3.

17. PLESSEN is owned in various shares by the following individuals: Plaintiff YUSUF, Fathi Yusuf, Mohammed Hamed, Fawzia Yusuf, Maher Yusuf, Nejah Yusuf, and Defendants WALEED HAMED, MUFEED HAMED, WAHEED HAMED, and HISHAM HAMED.

18. Plaintiff YUSUF is a shareholder of PLESSEN, was a shareholder of PLESSEN at the time of the wrongdoing alleged herein, has been a shareholder of PLESSEN continuously since that time, and will continue to be a shareholder of PLESSEN throughout the pendency of this action.

19. YUSUF, under Rule 23.1 of the Federal Rules of Civil Procedure, which applies in this action under Rule 7 of the Superior Court, has standing to bring this action and will adequately and fairly represent the interests of PLESSEN and its shareholders in enforcing and prosecuting its rights.

FIVE-H

20. Upon information and belief, Defendant WALEED HAMED is the President of FIVE-H and one of its principal beneficial owners.

21. Upon information and belief, Defendant WAHEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

22. Upon information and belief, Defendant MUFEEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

23. Upon information and belief, Defendant HISHAM HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

24. Upon information and belief, FIVE-H, by and through the INDIVIDUAL DEFENDANTS, seeks to conduct business in the U.S. Virgin Islands.

WALEED HAMED's Misappropriation of \$460,000

25. On or about March 27th, 2013, Plaintiff YUSUF paid with his personal Banco Popular Visa credit card the 2011 property taxes of PLESSEN.

26. YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

27. However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made to pay Plaintiff YUSUF's Banco Popular Visa credit card account would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

28. It was then revealed that on March 27, 2013, Defendants WALEED HAMED & MUFEEED HAMED, without authorization, issued check number 0376 on a PLESSEN in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

29. Defendant WALEED HAMED then endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in Defendant WALEED HAMED’s personal bank account.

30. Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile

31. Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.

32. As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.

33. Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

34. Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, and his acts were not, and could not have been, the product of a good faith exercise of business judgment.

35. Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.

36. All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

V. CAUSES OF ACTION

COUNT I – FRAUD/CONSTRUCTIVE TRUST (Against All Defendants)

37. Plaintiff YUSUF incorporates paragraphs 1 through 36 above as if fully set forth herein.

38. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H conspired and fraudulently misappropriated, converted and/or received the benefits of PLESSEN'S funds of approximately \$460,000.

39. Such funds were, upon information and belief, used directly and indirectly to acquire personal and/or real property in the benefit of the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively.

40. Defendants' acts constitute a fraud, unconscionable conduct and/or questionable ethics resulting in unjust benefit to the wrongdoers, *i.e.*, Defendants.

41. To remedy such injustice, this Court should impose a constructive trust for the benefit of PLESSEN until the resolution of this action on all personal and/or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust:

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*, when Defendant WALEED HAMED, & MUFEEED HAMED without authorization, issued check number 0376 in the amount of \$460,000 from PLESSEN's Scotiabank account;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;

- iv. is superior to any creditor of the Defendants;
- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action, based on the notice provided herein regarding the wrongful misappropriation of PLESSEN's funds as alleged in this Complaint and otherwise.

42. As noted above, "the date upon which a constructive trust is legally deemed to arise relates back in time to when the facts giving rise to such fraud or wrong occur," *i.e.*, March 27, 2013 in this action. *In re: Pitchford*, 410 B.R. 416, 420 (Bankr. W.D. Pa. 2009); *see also Osmond Kean, Inc. v. First Penn. Bank, N.A.*, 22 V.I. 71, 76 (Terr. Ct. 1986) ("The creditors of the constructive trustee are not bona fide purchasers.' Moreover, 'where a person holds property subject to a constructive trust, his creditors are not purchasers for value and are subject to the constructive trust. . . . So also, a creditor who attaches the property . . . is not a bona fide purchaser, although he had no notice of the constructive trust.'") (quoting Restatement of Restitution §§ 160 and 173); *Francois v. Francois*, 599 F.2d 1286 (3d Cir. 1979) (affirming trial court's "equitable power" to impose constructive trust to prevent unjust enrichment).

COUNT II – CONVERSION
(Against WALEED HAMED & MUFEED HAMED)

43. Plaintiff YUSUF incorporates paragraphs 1 through 42 above as if fully set forth herein.

44. As alleged in detail herein, Defendants WALEED HAMED & MUFEED HAMED wrongfully, and without the knowledge, consent or authorization of PLESSEN, misappropriated funds belonging to PLESSEN for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H.

45. Defendant WALEED HAMED obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H with the intent to permanently deprive PLESSEN of its lawful rights to those funds.

46. Accordingly, Defendants WALEED HAMED & MUFEED HAMED are liable for conversion.

**COUNT III – BREACH OF FIDUCIARY DUTIES
(Against WALEED HAMED)**

47. Plaintiff YUSUF incorporates paragraphs 1 through 46 above as if fully set forth herein.

48. Defendant WALEED HAMED, as an agent and officer of PLESSEN, owes PLESSEN's shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty.

49. Further, Defendant WALEED HAMED is, and at all relevant times was, required to use his utmost ability to control and manage PLESSEN in a fair, just, honest and equitable manner; to act in furtherance of the best interests of PLESSEN and its shareholders so as to benefit all shareholders equally and not in furtherance of his personal interests or benefit to the exclusion of the remaining shareholders; and to exercise good faith and diligence in the administration of the affairs of PLESSEN and in the use and preservation of its property and asserts.

50. By virtue of the foregoing duties, Defendant WALEED HAMED was required to, among other things:

- i. exercise good faith in ensuring that the affairs of PLESSEN were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business in accordance with applicable laws;
- ii. refrain from wasting PLESSEN's assets;
- iii. refrain from unduly benefiting himself and other non-shareholders at the expense of PLESSEN;

- iv. refrain from self-dealing;
- v. exercise the highest obligations of fair dealing; and
- vi. properly disclose to PLESSEN's shareholders all material information regarding the company.

51. However, by virtue of his position as Director and Officer of PLESSEN, and his exercise of control over the business and corporate affairs of PLESSEN, Defendant WALEED HAMED has, and at all relevant times had, the power to control and influence – and did control and influence – PLESSEN to engage in the wrongdoings alleged herein.

52. Specifically, as alleged in detail herein, Defendant WALEED HAMED breached his fiduciary duties by, among other things, unlawfully obtaining approximately \$460,000 of PLESSEN's funds; knowingly failing to inform PLESSEN regarding all material information related to such taking prior to the subject withdrawals; and otherwise knowingly failing to adhere to PLESSEN's corporate formalities, policies and procedures.

53. As a direct and proximate result of the foregoing breaches, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

COUNT IV – WASTE OF CORPORATE ASSETS (Against WALEED HAMED)

54. Plaintiff YUSUF incorporates paragraphs 1 through 53 above as if fully set forth herein.

55. As alleged in detail herein, Defendant WALEED HAMED, an agent and officer of PLESSEN, knowingly withdrew approximately \$460,000 of PLESSEN's funds, which withdrawal constituted an exchange of corporate assets under circumstances which no business person of ordinary, sound judgment could conclude that PLESSEN received adequate consideration.

56. As a direct and proximate result of the foregoing waste of corporate assets, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT V – UNJUST ENRICHMENT
(Against All Defendants)**

57. Plaintiff YUSUF incorporates paragraphs 1 through 56 above as if fully set forth herein.

58. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H individually and collectively were unjustly enriched by their receipt, benefit, use, enjoyment and/or retention of PLESSEN's assets.

59. It would be unconscionable to allow the INDIVIDUAL DEFENDANTS and FIVE-H individually or collectively to retain the benefits thereof.

**COUNT VI – CIVIL CONSPIRACY
(Against All Defendants)**

60. Plaintiff YUSUF incorporates paragraphs 1 through 59 above as if fully set forth herein.

61. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, *i.e.*, to, among other things, unlawfully defalcate or misappropriate the funds of PLESSEN.

62. The INDIVIDUAL DEFENDANTS and FIVE-H knowingly performed overt acts and took action to further or carry out the unlawful purposes of the subject conspiracy, including, but not limited to, Defendant WALEED HAMED's issuing and cashing of check number 0376 to the conspirators' benefit and PLESSEN's detriment.

63. As a direct and proximate result of the foregoing civil conspiracy, PLESSEN has sustained damages, including, but not limited to, damage to its reputation, loss of the funds unlawfully obtained from its Scotiabank account, and lack of control of PLESSEN's management and corporate affairs.

**COUNT VII – ACCOUNTING
(Against All Defendants)**

64. Plaintiff YUSUF incorporates paragraphs 1 through 63 above as if fully set forth herein.

65. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H unlawfully benefited from and/or misappropriated PLESSEN's funds.

66. Further, at all times relevant, Defendant WALEED HAMED, as an agent and officer of PLESSEN, owed to PLESSEN a fiduciary duty to account to the company and its shareholders in a timely and accurate manner.

67. At all times relevant, the INDIVIDUAL DEFENDANTS and/or FIVE-H held the exclusive possession and/or control over documentation that would establish the funds unlawfully taken from PLESSEN.

68. Absent such documentation, PLESSEN is without the means to determine, among other things, if funds are owned to it and, if yes, how much; and if its misappropriated funds were used to purchase any real or personal property, in which case it has an ownership interest in such property.

69. PLESSEN is without a sufficient remedy at law to ascertain its losses and/or interests in the misappropriated funds as set forth herein.

70. Accordingly, a full accounting is warranted.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff YUSUF prays for a Final Judgment against Defendants, jointly and severally, as follows:

A. Determining that YUSUF may maintain this action on behalf of PLESSEN and that YUSUF is an adequate representative of PLESSEN;

B. Determining that this action is a proper derivative action that is maintainable under law and in which a pre-suit demand was excused;

C. Awarding to PLESSEN the actual and compensatory damages that it sustained as a result of the causes of action set forth herein, which damages will be determined at trial;

D. Awarding to PLESSEN punitive damages justified by the acts set forth herein, which damages will be determined at trial;

E. Ordering the disgorgement to PLESSEN of all funds that were unlawfully misappropriated from its possession;

F. Enjoining, preliminarily and permanently, the Defendants' benefit, use or enjoyment of PLESSEN's misappropriated funds;

G. Imposing a constructive trust for the benefit of PLESSEN on all personal or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;
- iv. is superior to any creditor of the Defendants;

- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action;

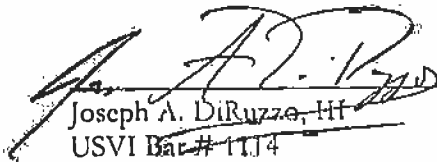
H. Awarding a full accounting of all monies, funds and assets that the Defendants received from PLESSEN;

I. Awarding to PLESSEN the costs and disbursements of this action, including, but not limited to, reasonable attorneys' fees, accountants' and experts' fees, costs and expenses;

J. Awarding pre- and post-judgment interest on any monetary award at the highest rates allowed by law; and,

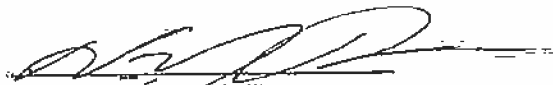
K. Awarding such further equitable and monetary relief as the Court deems just and appropriate.

Dated April 16, 2013



Joseph A. DiRuzzo, III
USVI Bar # 11114

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VERIFICATION

I, *Yusuf Yusuf*, hereby verify that I have authorized the filing of the foregoing Verified Shareholder Derivative Complaint; that I have reviewed the Complaint; and that the facts therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury pursuant to 28 U.S.C. section 1746, that the foregoing is true and correct.

DATE: 4/16/2013



Yusuf Yusuf, Shareholder
Plessen Enterprises, Inc.

EXHIBIT

B

January 25th, 2013 TRO Hearing 210:21-24

EXHIBIT B

1 A Nobody else. If I die or I -- after I give my
2 son the power of attorney, yes, he could because I'm not
3 working. I getting old. I can't do nothing.

4 Q How long is your partnership with Mr. Yusuf
5 supposed to last? When does it end?

6 A Forever. We start with Mr. Yusuf with the
7 supermarket and we make money. He make money and I make
8 money, we stay together forever.

9 MR. DAVID: Okay. One moment, Your Honor, I
10 maybe done.

11 **(Discussion off the record.)**

12 BY MR. DAVID:

13 Q Sir, have you ever signed any -- strike that.
14 Are you aware that there is a lease?

15 A I don't know. I didn't hear you.

16 Q Is there a lease for the St. Thomas store?

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

21 A Mr. Fathi the one. He in charge for it.

22 Q What other stores is Mr. Fathi in charge of?

23 A For all the three store.

24 Q That's all I have, sir. Thank you.

25 A You're welcome.

EXHIBIT C

Check No. 376

EXHIBIT C

TRB - Web Page 00000000

Document Information

Document Type:	Cheque Image	Date Processed:	03/27/2013
Transit Number:	30585	Cheque Serial Number:	0000376
Account Number:	45012	Amount:	(\$460,000.00)

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101-600-218

PLESSEN ENTERPRISES, INC
P.O. BOX 763
C-STED, VI 00821

30585-002 045

PAY TO THE ORDER OF Waleed Hamed 3/27/13 \$460,000.⁰⁰/₁₀₀

four hundred sixty thousand MAR 27 2013

045 30585-002

Scotiabank THE BANK OF NOVA SCOTIA

FOR [Redacted] *[Signature]*

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Document Information

Document Type:	Cheque Image	Date Processed:	03/27/2013
Transit Number:	30585	Cheque Serial Number:	0000376
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EXHIBIT

D

United v. Waleed Hamed

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

UNITED CORPORATION,	)	CIVIL NO. SX-13-CV- <u> </u>
)	
Plaintiff	)	CIVIL ACTION
)	
Vs.	)	ACTION FOR DAMAGES, ACCOUNTING,
	)	BREACH OF CONTRACT, & EQUITABLE
WALEED HAMED	)	RELIEF
<i>(a/k/a Wally, Wally Hamed)</i>)	
	)	COMPLAINT
JOHN DOE (1-10))	
)	
Defendants	)	JURY TRIAL DEMANDED
<u> </u>)	
=)	
<u> </u>)	
<u> </u>)	

Plaintiff United Corporation, hereinafter (“United”), and by and through its undersigned counsel complains of Defendant Waheed Hamed, hereinafter (“Hamed”) as follows:

I. BACKGROUND

1. This is a civil action for damages (both compensatory and punitive) recoupment, conversion, accounting, constructive trust, breach of contract, and breach of various fiduciary duties against Defendant Hamed, an employee and former agent of Plaintiff United. This complaint includes causes of action against Defendant Hamed for defalcating, and misappropriating significant funds belonging to Plaintiff United, arising out of Defendant Hamed’s tenure as manager of the operations of the Plaza Extra Supermarket store in Sion Farm, St. Croix, as well as other locations. Further, this civil action names John Doe 1-10 as persons who have worked knowingly, and jointly with Waleed Hamed in the commission of each of the causes of action alleged herein.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has personal jurisdiction, subject matter jurisdiction, and the amount in controversy is satisfied, pursuant to 4 VIC §76.

3. Venue is proper in the District of St. Croix because all of the parties are residents of the District of St. Croix, U.S. Virgin Islands, and the cause(s) of action arose in said District, pursuant to 4 VIC § 78.

4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff United Corporation is a duly organized Virgin Islands Corporation since January of 1979, and is authorized to conduct business in the Virgin Islands. Plaintiff is *sui juris*.

6. Plaintiff is owned completely in various shares by Fathi Yusuf, Fawzia Yusuf, Maher Yusuf, Nejeah Yusuf, Zayed Yusuf, and Yusuf Yusuf, hereinafter collectively referred to as the “Yusuf Family”.

7. Defendant Waleed Hamed is a natural person and is a resident of the U.S. Virgin Islands. Defendant Hamed is *sui juris*. At all times relevant to this action, Defendant Hamed has been an employee and agent of Plaintiff United.

8. Defendants John Doe 1 to 10, upon information, are employees, family, friends, and agents of Defendant Hamed who have participated and/or assisted defendant Waleed Hamed with the defalcation, conversion, and concealment of substantial assets that are the sole property of Plaintiff United. John Does 1 to 10 are natural persons and are each *sui juris*.

IV. FACTS

9. Plaintiff United was organized and authorized to conduct business in the U.S. Virgin Islands on January 15th, 1979 by its then shareholders Fathi Yusuf and his family. Plaintiff United has always been owned wholly in various percentage shares by the various members of the Yusuf family.

10. The Corporate officers of Plaintiff United have always been members of the Yusuf family.

11. Sometime in 1986, Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business.

12. As a result of this oral agreement, Plaintiff United agreed to rent a portion of its real property, United Shopping Plaza, to this supermarket joint venture.

13. United Shopping Plaza is located on the Island of St. Croix, U.S. Virgin Islands.

14. In 1986, the joint venture resulted in the first supermarket store being opened. United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix.

15. In 1986, Plaintiff United hired Waleed Hamed as an employee, and assigned him managerial duties at the Plaza Extra supermarket located in Sion Farm, St. Croix, U.S. Virgin Islands. Defendant Hamed managed and collected significant cash and other assets on behalf of Plaintiff United during the course of his employment.

16. In 2003, Plaintiff United, its shareholders Fathi Yusuf, Maher Yusuf, and Defendant Hamed, and the Defendant's brother Waheed Hamed were indicted in the case of *U.S. v United Corporation*, case no. 15-cr-2005 (D.V.I.).

17. During nine years of criminal proceedings, the U.S. Department of Justice and federal law enforcement (collectively the "U.S. Government"), gathered *significant financial documents*, including but not limited to tax returns, financial ledgers, accounting records, and various other documents concerning the parties herein. Prior to the release of the documents in October of 2011 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct.

Defendant's Acquisition of Substantial Securities through Defalcation of Plaintiff's Assets

18. During a search of the documents and files delivered by the U.S. Government, Plaintiff United reviewed documents comprising tax returns for Defendant Hamed. An examination of Defendant Hamed's tax returns revealed the following significant assets:

- a. **Tax Year 1992 (Stocks & Investments)\$ 408,572.00**
- b. **Tax Year 1993 (Stocks & Investments)\$7,587,483.00**

19. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Defendant Hamed through his unlawful access to monies and other properties belonging to Plaintiff United. Defendant Hamed never held any other employment since 1986, other than through his employment with Plaintiff United.

20. Defendant Hamed also never had any other significant source of income, business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

21. The income tax returns for the years 1992 and 1993 reflect substantial assets that upon information and belief derived from the unlawful conversion and unauthorized access to funds and monies belonging to Plaintiff United. Plaintiff United never provided Defendant Hamed remuneration of more than \$35,000 for a yearly salary.

22. In 1993, Defendant Hamed's personal income tax return showed a loss of \$394,382.00. Plaintiff United, through its Treasurer, inquired of Defendant Hamed where he obtained the money in 1992 to sustain a personal loss of \$394,000 in his equity portfolio.

23. Defendant Hamed replied that the significant stocks listed in the schedules attached to his joint tax return was that of "Hamdan Diamond" – an unrelated corporation - that the Certified Public Accountant that had prepared Defendant Hamed's 1993 income tax return had made a "mistake" and that Defendant Hamed "would get to the bottom of it."

24. To date, Defendant Hamed has offered no evidence of the "mistake" he claimed was attributed to the Certified Public Accountant.

25. Further, upon information, such losses were unlikely to be a "mistake" because Defendant Hamed "carried forward" those losses on his personal income tax returns through 1999.

26. An examination of Defendant Hamed's personal tax returns revealed that Defendant Hamed's stock purchases between 1991 and 1996 totaled more than \$7 Million.

27. In October of 2011, a review of the U.S. Government records and files further revealed the following defalcation of funds:

- a. Loans totaling \$430,500.00, approved by Defendant Hamed, presumably repaid to Defendant Hamed.
- b. Payments made with respect to the construction of Defendant Hamed's home amounting to \$481,000.00.

c. Six checks totaling \$135,000, drawn on the operating account of Plaintiff United's Plaza Extra supermarket, and made payable to "Waleed Hamed" personally.

28. To this date, Defendant Hamed refuses to explain and account for any of the aforementioned funds.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION BREACH OF FIDUCIARY DUTIES

29. Plaintiff incorporates paragraphs 1 through 28 inclusive as if fully set forth verbatim herein.

30. As an agent and employee of Plaintiff United, a corporate entity, Defendant Hamed owes fiduciary duties to the entity. Included in the fiduciary duty is the duty of loyalty. Not only is it Defendant Waleed Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, he is not permitted to place himself in a position where it would be for his own benefit to violate the duty.

31. Defendant Waleed Hamed has breached the following duties (the list of duties violated by Defendant Hamed, below is not intended to be an exhaustive or exclusive list):

- a. Duty of Loyalty
- b. Duty of good faith and candor;
- c. Duty to manage the day-to-day operations of Plaintiff United's Plaza Extra supermarket for the benefit of United;
- d. Duty of full disclosure of all matters affecting his employer Plaintiff United;

- e. Duty to refrain from self-dealing, and/or general prohibition against the fiduciary using his relationship to benefit his personal interest; and
- f. Duty to manage any funds, assets, and/or property belonging to Plaintiff United by virtue of its operation of the Plaza Extra Supermarket stores in accordance with applicable laws.

**SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST/RECOUPMENT**

32. Plaintiff incorporates paragraphs 1 through 31 as if fully set forth verbatim herein.
33. As an agent and employee of Plaintiff United, Defendant Hamed owes numerous fiduciary duties to Plaintiff United and its shareholders. Not only is it Defendant Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, but Defendant Hamed also is not permitted to place himself in a position where it would be for his own benefit to violate the duty.
34. Defendant Hamed has engaged in systemic misappropriation of substantial and valuable assets of Plaintiff United causing substantial injury to Plaintiff United. As a result, Plaintiff United has sustained significant financial injury.
35. As such, a constructive trust should be imposed to gather and account for all assets misappropriated by Defendant Hamed that belongs to Plaintiff United.

**THIRD CAUSE OF ACTION
CONVERSION**

36. Plaintiff re-incorporates paragraphs 1 through 35 inclusive as if fully set forth verbatim herein.

37. Defendant Waleed Hamed has knowingly converted substantial funds and assets belonging to Plaintiff United. Plaintiff never consented or agreed to Defendant Hamed's unauthorized use of its funds and assets. As such, Defendant Hamed is liable for conversion.

**FOURTH CAUSE OF ACTION
BREACH OF CONTRACT**

38. Plaintiff incorporates paragraphs 1 through 37 inclusive as if fully set forth verbatim herein.

39. Defendant was an at-will employee of Plaintiff United.

40. As an at-will employee of Plaintiff United, Defendant Hamed had a contractual duty to act in good faith, and to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United.

41. Defendant Hamed has breached his contractual duties to Plaintiff United, causing Plaintiff substantial economic and financial harm. As a result, Defendant Hamed is liable to Plaintiff for breach of contract.

**SIXTH CAUSE OF ACTION
ACCOUNTING**

42. Plaintiff incorporates paragraphs 1 through 41 inclusive as if fully set forth verbatim herein.

43. As agent and employee of Plaintiff United, Defendant Hamed was under full contractual obligation and other fiduciary duties to perform his functions as a manager with competence, integrity, and honesty to Plaintiff United Corporation and its shareholders. Defendant Hamed was not permitted to place himself in a position where it would be for his own benefit to violate the duty.

44. Defendant Hamed has breached his employment contractual agreement with Plaintiff United by mismanaging, misappropriating, and converting funds, monies, and other valuables to his personal use. As a result, Plaintiff United has sustained substantial financial damages.

45. As such, Plaintiff United is entitled a full accounting of all monies, funds, and assets unlawfully appropriated by Defendant Hamed.

VI. RELIEF REQUESTED

Wherefore, Plaintiff United Corporation, and its shareholders, respectfully pray for the following relief:

- a. Actual and compensatory damages to be determined at trial.
- b. Punitive damages for the intentional defalcation of funds and damages caused to Plaintiff United Corporation.
- c. A complete accounting and constructive trust of all funds, assets, opportunities, and other valuables converted and or misappropriated by Defendant Hamed.
- d. Costs of all professional fees that may be required for the audit and investigation of this matter.
- e. A return of all documents, including but not limited to electronically stored information, belonging to Plaintiff United in the possession (both actual and constructive) of Defendant Hamed.
- f. A Restraining Order precluding Defendant Hamed from:
 - i. Physically returning, or attempting to return, to any of the Plaza Extra supermarket stores;

- ii. Accessing, or attempting to access, any bank accounts belonging to United Corporation for any purpose;
- iii. Contacting, or attempting to contact, any employee of Plaintiff United concerning the operations and management of the Plaza Extra Supermarkets;
- iv. Preclude Defendant Hamed from contacting any business associates of Plaintiff United;
- v. Preclude Defendant Hamed from representing to third-parties that he is an employee of Plaza Extra;
- vi. Accessing, or attempting to access, any of Plaintiff United's, including but not limited to the Plaza Extra Supermarkets, books, records, and information regarding as to location or manner of storage;
- vii. Attorneys fees, court costs, and any other relief the court deems equitable.

Date: January 8, 2013

Respectfully Submitted,

DeWood Law Firm
Counsel for Plaintiff United

By: _____
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EXHIBIT
E

Browne v. Ritchey

202 Ill.App.3d 137
Appellate Court of Illinois,
First District, Third Division.

William BROWNE, Individually and as President
of Nationwide Truck Driving School, Inc.,
Plaintiffs–Appellees,

v.

William E. RITCHEY, Individually and as
President of Federal Truck Driving School of San
Diego, Inc., Defendants–Appellants.

No. 1–90–0578. | Aug. 8, 1990.

Plaintiff **partner** brought action against defendant **partner** seeking **preliminary injunction** requiring defendant to **continue** in the relationship. The Circuit Court, Cook County, Monica D. Reynolds, J., granted **preliminary injunctive** relief. Defendant appealed. The Appellate Court, Freeman, J., held that partnership was one at will which was properly terminated by defendant; therefore, grant of **preliminary injunction** requiring defendant to **continue** in the relationship was an abuse of discretion.

Reversed.

West Headnotes (6)

- ^[1] **Injunction**
↻ Grounds in general; multiple factors
Injunction
↻ Preponderance of evidence

To obtain **preliminary injunctive** relief, plaintiff must show, by preponderance of the evidence, that he has a clearly ascertainable right in need of protection; he will suffer irreparable harm without relief requested; he has no adequate remedy at law; and there is likelihood of success on merits.

- ^[2] **Partnership**
↻ Partnership at will

Partnerships formed without reference to any term are “partnerships at will.”.

- ^[3] **Partnership**
↻ Partnership at will

Partnerships at will are subject to dissolution at any time by express will of any **partner**.

- ^[4] **Partnership**
↻ Partnership at will

All that **partner** needs to do to dissolve partnership at will is give notice to copartners of intent to dissolve partnership.

- ^[5] **Partnership**
↻ Partnership at will

As to partnerships at will, dissolution at election of one **partner** is not a breach of contract and dissolving **partner** incurs no personal liability regardless of his motive for any injury to copartners who neglected to protect themselves by agreement to **continue** for definite term.

- ^[6] **Injunction**
↻ Partnerships

Partnership

Partnership at will

Partnership was a "partnership at will" which was properly terminated by defendant **partner** when he sent telegram to plaintiff **partner** stating his intent to dissolve partnership where oral partnership agreement between parties did not include any agreement as to duration of partnership; therefore, as defendant **partner** acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, grant of **preliminary injunction** requiring him to **continue** in that relationship was an abuse of discretion.

Attorneys and Law Firms

****809 *138 ***469** Donald G. Mulack, Anthony J. Smith of Keck, Mahin & Cate, Chicago, for defendants-appellants.

Nicholas J. Motherway, Robert J. Napleton of Motherway & Glenn, P.C., Chicago, for plaintiffs-appellees.

Opinion

Justice FREEMAN delivered the opinion of the court.

Plaintiff, William Browne, individually and as president of Nationwide Truck Driving School, Inc. (hereinafter Nationwide), filed a complaint to enjoin Defendant, William Ritchey, individually and as president of Federal Truck Driving School of San Diego, Inc. (hereinafter Federal), from breaching an agreement between the parties. Under the agreement, Nationwide was to operate a truck driving school in Chicago as a branch of Federal and to divide any profits realized equally with Federal in exchange for utilization of Federal's accreditation. Federal held its accreditation from the Accrediting Counsel for **Continuing** Education and Training (hereinafter ACCET). Plaintiff alleged that defendant had breached the agreement by closing its Chicago branch and removing the accreditation contracted for by Nationwide. After an evidentiary hearing, the trial court granted plaintiff a mandatory **preliminary injunction** ordering defendant to,

inter alia, restore to plaintiff's use the accreditation granted defendant by ACCET. Defendant appeals from that order.

Plaintiff testified to the following at the evidentiary hearing. Plaintiff had operated a truck driving school in Chicago for about 14 years as of 1989. From December 1985 to about June 1987, plaintiff's school had been accredited. Accreditation was important to a school because it was a ****810 ***470** prerequisite for Federal financial aid to its students. Plaintiff approached defendant in the fall of 1987 to explore the idea of a partnership in Chicago. In April 1988, the parties reached an agreement to open a truck driving school in Chicago and to split the profits equally. Additional terms of the parties' agreement were that: the school would be accredited by becoming a branch of Federal; the school would be named "Federal Truck Driving School d/b/a Nationwide Truck Driving School, Inc."; plaintiff was to run the school and pay its expenses; defendant was to receive 100% of the stock of Nationwide; and, plaintiff was to have an option to repurchase 49% of the stock after six months. Plaintiff operated the Chicago school under Federal's existing accreditation from May to August 1, 1988. On ***139** August 1, 1988, defendant notified plaintiff that he was closing Federal's Chicago branch and that the school could no longer use Federal's accreditation. At that time there were approximately 135 students with unfulfilled contracts to attend the school. Plaintiff believed that if the Chicago school did not fulfill its obligation to train these students it would risk losing its license from the Illinois Secretary of State. It would also risk being unable to obtain accreditation from ACCET on its own. Defendant did not receive Nationwide's stock because he never asked for it and plaintiff was "holding it in abeyance." Plaintiff's agreement with defendant did not depend on their execution of a written agreement, prepared by plaintiff's attorney, containing the terms to which they had otherwise agreed. If denied the use of Federal's accreditation, it would take the Chicago school about a year to obtain its own accreditation, which would not be in sufficient time to allow plaintiff to fulfill its student contracts.

On cross-examination, plaintiff testified as follows. Defendant had asked for Nationwide's stock on one occasion but plaintiff did not tender it to him at that time. It was not part of the parties' agreement that independent accreditation would be sought for Nationwide separate and apart from Federal's accreditation for its Chicago branch. Paragraph 6 of the written agreement, which the parties had included in their oral agreement had nothing to do with obtaining that independent accreditation. Plaintiff never intended to obtain such accreditation. Nor did plaintiff

want to run the school separately from Federal.

Defendant, called as a witness by plaintiff, testified as follows. He and plaintiff reached an oral agreement to operate a school in Chicago, the terms of which were the same as those contained in the unexecuted written agreement drafted by plaintiff's attorney. Although he never gained actual possession of Nationwide's stock, defendant considered himself the owner of the Chicago school. Defendant's failure to gain possession of the stock had nothing to do with his decision to close the Chicago school. On cross-examination, defendant testified that he did not execute the written agreement because he never received the Nationwide stock.

On his own behalf, defendant testified as follows. The oral agreement that he had with plaintiff was that they would operate a branch of Federal in Chicago and seek independent accreditation for Nationwide. Because, under Federal regulations, an accredited school cannot loan its accreditation to a nonaccredited school and in order to protect Federal's accreditation. Defendant made sure that the Chicago school was accredited as a branch of Federal. In order to apply for and obtain *140 independent accreditation for Nationwide, pursuant to the agreement with plaintiff, defendant was required by ACCET to own at least 51% of Nationwide's stock. Defendant never received the Nationwide stock. Paragraph six of the unexecuted written agreement provided, with respect to the independent accreditation that defendant was to obtain for Nationwide, that Nationwide's stock was to be sold to Federal. Plaintiff's failure to tender the Nationwide stock to defendant made it impossible for him to seek independent accreditation for Nationwide. Defendant did not execute the written agreement because he did not agree with two of its provisions. Defendant treated plaintiff as an employee upon plaintiff's failure to transfer the Nationwide stock to him and defendant's failure to sign the written agreement. Neither an **811 ***471 applicant for enrollment in a Federal school nor Federal are bound if the applicant does not pay any tuition.

In granting plaintiff a **preliminary injunction**, the trial court found that the parties entered into an oral agreement whereby plaintiff was to be the **manager** of a Chicago branch of Federal. It further found that despite plaintiff's failure to tender the Nationwide stock to defendant the parties operated as **partners** for nine months. The trial court further concluded that the oral agreement was a legally enforceable contract because there was mutual assent to it and that irreparable injury would result, without the **injunction**, because refusing accreditation "destroys the

school."

OPINION

^[1] Preliminarily we must note that, in order to obtain **preliminary injunctive** relief, a plaintiff must show, by a preponderance of the evidence that: (1) he has a clearly ascertainable right in need of protection; (2) he will suffer irreparable harm without the relief requested; (3) he has no adequate remedy at law; and (4) there is a likelihood of success on the merits. (*Service Systems Corp. v. Van Bortel* (1988), 174 Ill.App.3d 412, 123 Ill.Dec. 833, 528 N.E.2d 378.) On appeal, defendant relies upon several grounds to argue that the trial court erred in entering the **preliminary injunction** for plaintiff. In view of our conclusion that plaintiff lacks a clearly ascertainable right entitled to protection, we need only address defendant's contention that his partnership with plaintiff was a partnership at will and thus terminable at any time.

^[2] ^[3] ^[4] ^[5] With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships *141 are subject to dissolution at any time by the express will of any **partner**. (*Maimom v. Telman* (1968), 40 Ill.2d 535, 538, 240 N.E.2d 652; *Blake v. Sweeting* (1887), 121 Ill. 67, 70, 12 N.E. 67; *Sjo v. Cooper* (1975), 29 Ill.App.3d 1016, 1017, 331 N.E.2d 206; *Salter v. Condon* (1925), 236 Ill.App. 17, 25; Ill.Rev.Stat.1987, ch. 106 ½, par. 31(1)(b); 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving **partner** need do is give notice of his intent to dissolve the partnership to his **co-partners**. (*Blake*; *Sjo*; *Salter*; 59A Am.Jur.2d Partnership § 820 (1987).) There is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a dissolution at the election of one of the **partners** is not a breach of contract and the dissolving **partner** incurs no liability regardless of his motive or any injury to his **co-partners** "who neglected to protect themselves by an agreement to **continue** for a definite term." 59A Am.Jur.2d Partnership § 819, at 641 (1987) citing, *inter alia*, *Thanos v. Thanos* (1924), 313 Ill. 499, 145 N.E. 250.¹

^[6] The record in this case reveals that the oral partnership agreement between the parties did not include any agreement as to the duration of their partnership. Moreover, plaintiff does not so allege on appeal. Therefore, the agreement and the parties' rights thereunder were governed by the foregoing rules. Defendant had the right

to dissolve his partnership at will with plaintiff at any time as long as he gave notice of his intent to do so. Defendant's telegram to plaintiff on August 1, 1989 stating that he was closing the Chicago branch of Federal satisfied his notice obligation. As defendant acted within his rights under the parties' agreement and partnership law in terminating his relationship with plaintiff, the grant of a **preliminary injunction** requiring him to **continue** in that relationship was an abuse of discretion.

Plaintiff concedes the general validity of the foregoing rules of partnership law. However, he argues that defendant cannot ****812 ***472** evade the specific performance of their oral contract by claiming that the partnership created thereby was terminable at will. Plaintiff so reasons ***142** based on: (1) the rule that partnerships are contractual relationships to which principles of contract law are fully applicable; (2) the contract law principle that an essential element for the formation of a contract is the parties' mutual assent to its terms; and (3) the rule that the existence of a partnership depends upon the parties' intent. Applying these principles here, plaintiff concludes that the trial court, having found that he and defendant had agreed to operate as **partners**, properly exercised its equitable powers.

As we understand it, plaintiff's argument is that, having once manifested an intent to form and conduct a partnership with him, defendant could not thereafter withdraw from that partnership as he pleased or chose. The problem with plaintiff's argument, however, is that neither the principles upon which he relies for that conclusion nor

the case from which they are cited, *Allen v Amber Manor Apartments Partnership* (1981), 95 Ill.App.3d 541, 51 Ill.Dec. 26, 420 N.E.2d 440, provide any support for it. *Allen* did not involve the question here presented. More importantly, that partnerships are subject to contract law principles is of no avail to plaintiff absent citation to any such principle requiring a conclusion contrary to that which we have reached in this case. That mutual assent is required for the formation of a contract and that the existence of partnership depends on the parties' intent are not such principles. Rather, those rules have nothing whatsoever to do with a **partner's** exercise of his right to withdraw from a partnership at will. Plaintiff's arguments are without merit.

For the foregoing reasons, we reverse the order granting a **preliminary injunction** against defendant.

REVERSED.

CERDA, P.J., and WHITE, J., concur

Parallel Citations

202 Ill.App.3d 137, 559 N.E.2d 808

Footnotes

¶ It could be argued, based on defendant's testimony that he and plaintiff agreed to obtain independent accreditation for Nationwide, that the parties formed a partnership for a particular undertaking and that it was thus not terminable at will. (See, generally, Ill.Rev.Stat.1987, ch. 106 ½, par. 31(1)(b).) However, plaintiff's denial of this intent at the evidentiary hearing as a part of their agreement precludes a finding of mutual assent to that term and reliance thereon to reach a conclusion contrary to that which we reach in this case.

EXHIBIT

F

January 25th, 2013 TRO Hearing p. 201:2-5

1 A Yes, sir.

2 Q And who is your oldest son? Who is your oldest
3 son?

4 A Mr. Yusuf he is in charge for everybody.

5 Q What is your oldest son's name? Who is your
6 oldest son?

7 A My oldest son is Waleed Hamed.

8 Q And did there come a time that you stopped
9 working in the business every day?

10 A No.

11 Q Okay. Tell me what you did in the business?

12 A He used to work with me and in the supermarket,
13 without payment before we open. They build a beam and
14 they have somebody from St. Lucia, Charlie, he used to
15 work, and he will help him hold the beam with him until 12
16 o'clock in the night.

17 Q Okay. After a while did you get the supermarket
18 open?

19 A After the work in the supermarket.

20 Q Okay.

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.

25 Q Okay.

EXHIBIT

G

Complaint, *United v. Charriez*

Superior Court of the Virgin Islands
Division of St. Croix



OFFICE OF THE CLERK
(340) 778-9750

Date: May 6, 2013

Plaintiff s/Attorney's name NIZAR A. DEWOOD, ESQ.

Address 2006 EASTERN SUBURB, STE. 101 C'STED VI 00820

Address _____

DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT

Dear ATTORNEY DEWOOD

The Court is in receipt of your CIVIL / CRIMINAL / FAMILY / PROBATE filing,
which was docketed on MAY 6, 2013 and assigned Case Number
SX-13-CV-152

The Judge / Magistrate Assigned to your case is the Honorable
JUDGE HAROLD WILLOCKS

If there is a fee associated with your filing, such fee must be filed along with your
petition/complaint, or within five (5) days thereafter. Failure to pay the required fee may
result in your petition / complaint being dismissed for failure to prosecute.

If you have any questions or concerns, you may contact the Office of the Clerk of the
Court at (340) 778-9750 (St. Croix) or 774-6680 (St. Thomas-St. John).

Sincerely,
Venetia Velazquez, Esq.
Clerk of the Court


BY: TAMARA N. ALLEN, COURT CLERK II

Cc: WADDA CHARRIEZ, Defendant
Case File

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

13 NOV 5 1 49

UNITED CORPORATION,)
)
)
Plaintiff)
)
Vs.)
)
WADDA CHARRIEZ)
)
)
Defendant)
)
_____)

CIVIL NO. SX-13-CV-152

CIVIL ACTION

ACTION FOR DAMAGES
& RECOUPMENT

COMPLAINT

JURY TRIAL DEMAND\

COMPLAINT

Plaintiff United Corporation (“United”), and by and through its undersigned counsel files this action for damages and alleges as follows:

I. BACKGROUND

1. This is a civil action for damages, compensatory and punitive, arising out of Defendant Charriez for fraud, breach of contract, breach of fiduciary duties, and conversion.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

- 2. This Court has jurisdiction pursuant to 4 VIC §76.
- 3. Venue is proper in the District of St. Croix because all of the parties are residents of the District of St. Croix, and the cause(s) of action arose in said District, pursuant to 4 VIC § 78.
- 4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff United Corporation is a duly organized Virgin Islands Corporation since January of 1979, and is authorized to conduct business in the Virgin Islands. Plaintiff is *sui juris*.

6. Defendant Wadda Charriez is a natural person and is a resident of the U.S. Virgin Islands. Defendant Charriez is *sui juris*. At all times relevant to this action, Defendant Charriez has been an at-will employee of Plaintiff United.

IV. FACTS

7. Plaintiff United operates three supermarket stores throughout St. Croix and St. Thomas under the trademark of "Plaza Extra" located in 4C & 4D Estate Sion Farm, St. Croix, 14 Estate Plessen, St. Croix and 4605 Tutu Park Mall, Suite 200, St. Thomas.

8. Plaintiff United is the employer of Wadda Charriez, who began her employment on January 5th, 1998 as a cashier. Thereafter, Defendant Charriez eventually became an office manager was assigned the duties of preparing and issuing payroll checks.

9. United utilizes a hand recognition payroll system where every employee must scan his or her right hand to "punch-in" and "punch-out"

10. The system then automatically feeds the payroll system with time information obtained from each employee's hand scan.

11. Any print out from the payroll system would then show the date and time the hand was scanned. However, if an employee manually enters the entry and exit times, any printout of that employee's time sheets will show an asterisk next to the manually overridden time.

12. This punch-in and punch-out hand recognition procedure is required for all hourly wage based employees. Of all the hourly based employees, Defendant Charriez and by virtue payroll responsibilities has manually overridden the payroll system virtually every single time.

13. There is only one explanation as to why Defendant Charriez's timesheets would show consistent manual time entries: to report false hours and to cause the payroll system to issue overstated wages.

14. On April 29th, 2013, Plaintiff United Corporation terminated Defendant Wadda Charriez for reporting false hours causing Plaintiff United monetary losses of \$40,878 dollars.

15. Upon information, Defendant Charriez reported false hours for the years 2006 through 2009, the records of which are being collected and analyzed.

16. For the years 2010 through 2012, Defendant Charriez reported the following total false hours:

i. Year 2010	786 hours @ \$18.00 = \$14,148
ii. Year 2011	832 hours @ \$18.00 = \$14,976
iii. Year 2012	615 hours @ \$18.00 = <u>\$11,754</u>
	\$40,878

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION FRAUD

23. Plaintiff incorporates paragraphs 1 through 22 inclusive as if fully set forth verbatim herein.
24. Defendant Charriez fraudulently reported hours of work to Plaintiff United during the period of January 1st, 2010 through December 15th, 2012, causing Plaintiff losses of \$40,878 dollars.
25. Plaintiff United materially relied on the representations of Defendant Charriez, and as a result issued numerous checks for overstated amounts to Defendant Charriez.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES

26. Plaintiff incorporates paragraphs 1 through 25 inclusive as if fully set forth verbatim herein.
27. Defendant Charriez is an employee of Plaintiff United; as such Defendant owes Plaintiff various duties, including duty of loyalty and duty of care.
28. Defendant Charriez's reporting of false hours to gain for her personal benefit in the amount of \$40,878 is a breach of each of these duties. Defendant Charriez is therefore liable to Plaintiff for all damages sustained by Plaintiff United as a result of Defendant Charriez' breach of their duties.

THIRD CAUSE OF ACTION

CONVERSION/RECOUPMENT

29. Plaintiff incorporates paragraphs 1 through 28 inclusive as if fully set forth verbatim herein.

30. Defendant obtained and received \$40,878 in unauthorized and fraudulent compensation from Plaintiff United. Defendant is liable to Plaintiff for the conversion of said funds to her benefit.

31. As such, Plaintiff United is entitled to full recoupment of these funds including but not limited to a constructive trust in favor of Plaintiff United.

VI. RELIEF REQUESTED

Wherefore, Plaintiff United Corporation, respectfully prays for the following relief:

- i. Compensatory damages in the amount of \$40,878 dollars.
- ii. Punitive damages in an amount to be determined at trial.
- iii. Attorney's fees and court costs for filing the Action
- iv. Any other relief the court deems equitable.

Date: May 3, 2013

Respectfully Submitted,

DeWood Law Firm
Counsel for Plaintiff United

By: 

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

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED
Plaintiffs,

vs.

FATHI YUSUF & UNITED CORPORATION,
Defendants,

YUSUF YUSUF, ZAYED YUSUF, &
ZEYAD YUSUF (f/k/a Syaid Yusuf)
Intervenors.

CASE # SX-12-CV-370

**MOTION FOR EXPEDITED RESOLUTION OF PRIOR MOTION TO INTERVENE
AND A STAY OF THE COURT'S ORDER DATED APRIL 25, 2013**

COME NOW Intervenor Defendants, YUSUF YUSUF, ZAYED YUSUF, FAWZIA YUSUF, and ZEYAD YUSUF, (collectively "Intervenors") by and through their undersigned counsel, and move for an expedited hearing and/or immediate resolution of their Motion to Intervene, filed on January 24, 2013. Intervenor Defendants also seek a stay of this Court's April 25, 2013 Order pending appeal of that Order.

The basis for the primary relief sought by this motion is that the April 25th Order has denied, for all practical purposes, movants' motion to intervene. Movants request an Order denying the Motion to Intervene explicitly so that Intervenor Defendants may appeal the denial.

This Court, by failing to expressly address Intervenor Defendants' Petition to Intervene, has concluded implicitly that the interests of "all parties and the public are represented adequately through the named defendants." However this failure to rule expressly on the petition does not constitute an adjudication of the Intervenor

Defendants' Petition and, as such, may operate to prohibit Intervenors' appeal of that Order. See, *Davis v. Allied Mortg. Capital Corp.*, 2010 WL 1576452, * 5 (V.I. Supreme Ct.)(noting relevantly that "As a general rule, "[a]n order that adjudicates only the plaintiff's claims against the defendant does not adjudicate a counterclaim, cross-claim, or third party claim." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 205 (Tex.2001)citing, *TMA Fund, Inc. v. Biever*, 520 F.2d 639, 641 (3d Cir.1975) ('Accordingly, where the order granting summary judgment did not adjudicate the counterclaim, all the claims of the parties were not decided," and "[t]he order thus is not a final, appealable order....'). Thus, consistent with this well-settled principle, Intervenor Defendants request an Order expressly denying their Petition to Intervene.

A. INTERVENORS REQUEST AN EXPEDITIOUS RULING ON THEIR JANUARY 24, 2013 MOTION TO INTERVENE IN THE MAIN ACTION BEFORE THIS COURT.

Federal Rule of Civil Procedure, Rule 24(a)(2) states that a party may intervene as of right under certain circumstances "unless the applicant's interest is adequately represented by existing parties." For the reasons set forth in their papers supporting their motion to intervene, the Proposed Intervenors believe that their interests are not adequately represented. Intervenor Defendants also believe that, in the alternative, permissive intervention should be allowed pursuant to Rule 24(b)(1)B) in that Intervenors' motion was timely and that their claims "share[] with the main action a common question of law or fact."

Accordingly, Intervenor Defendants respectfully request that this Court should resolve the motion to intervene as expeditiously as possible, and make explicit its implicit denial of the motion to intervene so that movants can appeal that holding to the

Virgin Islands Supreme Court. Alternatively, should the Court believe that its April 25th Order does not resolve the motion to intervene it should expedite a hearing on the motion to resolve the motion to intervene.

**B. THIS COURT SHOULD STAY ITS ORDER OF APRIL 25, 2013
UNTIL AN APPEAL OF THE ORDER IS RESOLVED**

Intervenor Defendants submit that a stay of this Court's Order must be granted because the Court's factual findings in the April 25th Order are inconsistent with the testimony of the witnesses and its conclusions of law do not follow from those factual findings and are at odds with well-settled principles of Virgin Islands law. The key testimony and relevant factual findings and conclusions of law made by the Court are as follows:

Relevant Testimony:

1. Plaintiff Hamed testified that the parties' intent under the agreement to share the net profits from the Plaza Extra Store was that Defendant Yusuf is in "charge of all three stores." *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit A**.
2. Plaintiff Hamed also testified that he "cannot do nothing" and has not worked in the stores since 1996 and that he retired in 1996. *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit A**.
3. Plaintiff Hamed admitted that he never worked in any management capacity at any of the Plaza Extra Stores, which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf "*is in charge for everybody*" and everything. Jan. 25, 2013 Hr'g Tr. at 201:4 (reflecting

Mohammad Hamed's declaration, during his direct testimony, that "*Mr. Yusuf he is in charge for everybody*"), 201:23-24, 210:21-23 (acknowledging again that Fathi Yusuf is in "charge" of "all the three store[s]")(emphasis added).

4. The Plaintiff also testified that Fathi Yusuf made the decisions and he would agree with "[w]hatever" decisions Fathi Yusuf ever made, including the decision that Mohammad Hamed and Mohammad Hamed's sons were mere "employees" "like any [other] employees". Jan. 25, 2013 Hr'g Tr. at 201:21-24

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.
25 Q Okay.

5. Plaintiff Hamed expressly testified that the alleged oral partnership was an individual one between himself and Fathi Yusuf only. That is no partnership exists with Plaintiff Hamed's sons.

13 Q Is Fathi Yusuf partners with Waleed?
14 A Ha?
15 Q Is Fathi Yusuf partners with Waleed, your son
16 Waleed?
17 A No. But he is my partner. I, not my son.
18 Q Your other sons are not partners with Fathi
19 Yusuf, correct?
20 A Yes. I'm his partner, not my son.
21 Q And if Mr. -- If Fathi Yusuf has something to
22 talk to you about the partnership, he is to talk to you,
23 correct?
24 A Yes.
25 Q And nobody else?

Relevant Factual Findings of the Court:

1. The Court found that Mohammed Hamed and Fathi Yusuf “were the only partners in Plaza Extra by the time in 1986 the supermarket opened for business.” See Memorandum Opinion, Findings of Fact (hereinafter “FoF”) No. 11 .
2. That both parties acknowledged that the partnership was for an “indefinite term.” FoF No. 13.
3. That “there is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra.” FoF No. 15 (citing Pl. Ex. 3, p.11).
4. The Court found that the stores were jointly managed, based on the fact that the Hamed sons were employed as co-managers in the stores. FoF No. 19.
5. The court also found that “in operating the ‘office’ Yusuf did not clearly delineate the separation between United ‘who owns United Shopping Plaza” and Plaza Extra, despite the fact from the beginning Yusuf intended to and did “hold the supermarket for my personal use.” FoF No. 21 (quoting Pl. Ex. 1, p. 8:1-7).
6. The Court found that “in late 2011 United, [i.e., Fathi Yusuf] had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which [Fathi] Yusuf accused members of the Hamed family of stealing money from the supermarket business . . .” FoF No. 29

7. The Court acknowledged that after the discovery of theft, "discussions commenced initiated by Yusuf's counsel, regarding the 'Dissolution of Partnership'" and that "[o]n March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship." FoF No. 30.

Relevant Conclusions of Law:

1. On April 25th, 2013, the Court granted Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. The Court found a likelihood of Plaintiff prevailing on the merits concerning the existence of a partnership between Plaintiff Hamed and Defendant Yusuf. The Court further found that under Virgin Islands law, there is no distinction between a "joint venture" and a "partnership." *Memorandum Opinion, Conclusions of Law* ¶ 8.
2. The Court concluded that Yusuf admitted a partnership repeatedly over the years "including through his notice of his dissolution of their partnership," dated March 13, 2012 . *Memorandum Opinion, Conclusions of Law* ¶10.
3. The Court never addressed the immediate legal effect of the notice of dissolution of Partnership.
4. The Court then entered an Order directing that "the operations of the three Plaza Extra Supermarkets shall continue as they have throughout the years . . . without unilateral action by either party, or representative(s)

affecting the management, employees, methods, procedures and operations.” See April 25, 2013 Order.

5. In other words, despite Defendant's Dissolution Notice and termination of any purported partnership, the Court issued a Preliminary Injunction requiring the parties to continue to operate the terminated at-will partnership and to jointly manage the operations of the Plaza Extra Stores.

C. THE COURT'S LEGAL CONCLUSION THAT AN ORAL AT WILL PARTNERSHIP EXISTED BETWEEN MOHAMMED HAMED AND FATHI YUSUF TO SHARE IN THE PROFITS OF PLAZA EXTRA 50/50 SERVES ONLY TO TRIGGER MOHAMMED HAMED RIGHT TO DEMAND AN ACCOUNTING OF SUCH PROFITS FROM THE DATE OF DISSOLUTION OF THE PARTNERSHIP, AND DOES NOT ENTITLE MOHAMMED HAMED TO THE SUBSTANTIVE RIGHT TO MANAGE AND/OR OPERATE THE PLAZA EXTRA STORES, CONTRARY TO THE TERMS OF THE ORAL PARTNERSHIP AGREEMENT.

Recognition by this Court that a partnership existed between Fathi Yusuf and Mohammed Hamed, means only that Mohammed Hamed has an economic interest in the Profits of the Plaza Extra Store. Under the UPA and Virgin Islands Law, when one partner withdraws from a partnership, dissolution occurs absent agreement between the partners to the contrary. See, e.g., 26 V.I.C. §171, §173. As a general rule, upon dissolution of a partnership, any partner is entitled to an accounting. Such an economic interest in the profits of a business does entitles Mohammed Hamed to demand an accounting and to request reconciliation of the partners' individual accounts based on any partnership agreement or applicable partnership law. See, 26 V.I.C. 173. This well settled doctrine has long been the law under the UPA and is followed in most every

jurisdiction. see also, *6D Farm Corp. v. Carr*, 63 A.D.3d 903, 906, 882 N.Y.S.2d 198, 201 (2d Dep't 2009)(holding that 'A cause of action for an accounting accrues upon dissolution of the partnership and must be commenced within six years of dissolution.)"

Intervenors submit that this Court finding that a partnership existed between Mohammed Hamed and Fathi Yusuf does not confer a direct and substantial interest to Plaintiff Hamed's representatives to interfere with or enjoin the operations of United Corporation d/b/a Plaza Extra. See, e.g., *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982)(recognizing that an economic interest in half of the profits of a dissolved partnership does not entitle the party possessing such economic interest the rights of a partner.) That is, Plaintiff Hamed's sons have no legal right to continue as managers of the business.

In this case Mohammed Hamed testified clearly, that he has not worked at the Plaza Stores since 1996 and that Fathi Yusuf was the ultimate decision-maker as to the operations of the business of the three (3) Plaza Extra stores. Plaintiff Hamed conceded that under the terms of the agreement with Fathi Yusuf, management of the business was given exclusively to Fathi Yusuf and that he and his sons were employees and had always been employees. The Order of the Court which ousts the management of United Corporation of the Plaza Extra stores is contrary to the parties' agreement and the laws of the Virgin Islands. The Hamed sons have no right to manage the stores and Fathi Yusuf as the ultimate management authority for the stores may terminate their managerial responsibilities for no cause or good cause. In this matter, it has been established that there has been significant funds taken from the business of the Plaza Extra stores by the agents and representatives of Mohammed Hamed. To the extent

Mohammed Hamed knew of, benefitted unjustly and condoned the wrongful and criminal acts of his sons, as their principal he is the partner who is responsible and legally liable for such wrongs against the business. As such, he is not entitled to manage the winding down of the partnership business. As argued by Defendant United, the testimony of the Plaintiff Hamed is clear and he has admitted he is not capable of managing the stores nor has he “ever worked in any management capacity at any of the Plaza Extra Stores, which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf *“is in charge for everybody”* and everything. Jan. 25, 2013 Hr’g Tr. at 201:4 (reflecting Mohammad Hamed’s concession, even during his direct testimony, that *“Mr. Yusuf he is in charge for everybody”*), 201:23-24, 210:21-23 (acknowledging again that Fathi Yusuf is in “charge” of “all the three store[s]”) (emphasis added). In addition, as noted above, the Court’s order makes no provision for the resolution of disputes (as has been the case “throughout the years prior” to this action) by removing Fahti Yusuf’s from his supervisory role at the stores.”

This Court's Order granting mandatory relief, re-inserting the sons of Mohammed Hamed who have exonerated large sums of monies from the business for their personal gain trenches on the right of United to manage its business as it sees fit and is akin to putting a “fox to watch the hens.” Moreover, the Order creates an impracticable situation and has ground the operations of the business to a standstill. Under the record before this Court, the untenable situation created by the Court’s judicially expansive order cannot be justified, and must be vacated or modified. For these reasons alone, and for the reasons argued by Defendants in their motions filed on even date, Intervenors ask that the court grant a stay of its April 25th Order.

In addition since Rule 24 (b) does not explicitly mention adequacy of representation as a ground for permissive, Intervenor Defendants request an express Order on their motion, either granting or denying the motion to intervene so that Intervenors may appeal the findings of fact and conclusions of law in the Court's April 25th Order.

For all the above stated reasons, Intervenors respectfully request that the Court resolve the motion to intervene as expeditiously as possible, and enter an Order on their motion so that, an appeal from the April 25 Order of the Court may be perfected.

RESPECTFULLY SUBMITTED,

LAW OFFICES OF K. G. CAMERON
Attorney for Respondent

Dated: May 9, 2013

By: _____



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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2013, a true and accurate copy of the foregoing was forwarded via email to the following persons of counsel:

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1001 Brickell Bay Dr., 32nd FL
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jdiruzzo@fuerstlaw.com

By: _____




EXHIBIT A

1 A Yes, sir.

2 Q And who is your oldest son? Who is your oldest
3 son?

4 A Mr. Yusuf he is in charge for everybody.

5 Q What is your oldest son's name? Who is your
6 oldest son?

7 A My oldest son is Waleed Hamed.

8 Q And did there come a time that you stopped
9 working in the business every day?

10 A No.

11 Q Okay. Tell me what you did in the business?

12 A He used to work with me and in the supermarket,
13 without payment before we open. They build a beam and
14 they have somebody from St. Lucia, Charlie, he used to
15 work, and he will help him hold the beam with him until 12
16 o'clock in the night.

17 Q Okay. After a while did you get the supermarket
18 open?

19 A After the work in the supermarket.

20 Q Okay.

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.

25 Q Okay.

1 Q Those are all the questions I have.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. DAVID:

5 Q Good afternoon, Mr. Hamed.

6 A Good afternoon.

7 Q Sir, while you were testifying I was writing
8 some things down, I want to make sure I understood what
9 you said, okay?

10 A Please, take it easy. Sometime I don't hear you
11 too good.

12 Q Yes, sir. I will try to talk loud enough and
13 slow enough so you can hear me; is that fair?

14 A Yeah. Go ahead.

15 Q You testified that you initially gave Fathi
16 Yusuf \$14,000; do you remember that?

17 A . 14,000?

18 Q Yes.

19 A Yes, sir.

20 Q And that -- and then --

21 A And that time I bring to him in the socks. You
22 know, the socks.

23 Q Yes, sir.

24 A I put it inside the socks. Me and my wife went
25 to her sister, his wife, to Mr. Yusuf.

1 Q Okay. And --

2 A And I asked her for -- where is Fathi tell me he
3 is in the shopping center. He was building the shopping
4 center.

5 Q Okay.

6 A And she told me, please, go and get him from the
7 shopping center.

8 Q Okay.

9 A To the house here.

10 Q I'm going to -- I'm going to try to stay
11 focused. Let me ask you another question?

12 A I went to shopping center and I find Mr. Yusuf
13 there. I tell him, let's go home, take a cup of coffee.
14 He said, Hamed, I owe the people money, I don't know how I
15 going to pay him tomorrow. I told him, look, the money, I
16 have in your house. You going to pay him and more you
17 have. He said where? I said, in your house by your wife.
18 Let's go home.

19 He went drive his car and I go behind him to the
20 house, drink the coffee. And he get the socks and open it
21 and start to check. He tell me how much? I tell him, you
22 check it. He check it. He tell me 14,000.

23 Q Okay.

24 A I tell him what I save and my grocery in my
25 business, that's what I have.

1 Q Okay.

2 A And I promise you any time I'm going to save
3 5,000, 10,000 whatever, I will bring it to you because
4 it's his brother used to send him back up when he build
5 it.

6 Q Okay. The next amount of money that you gave
7 him was a CD for \$20,000; is that correct?

8 A Yes.

9 Q Okay. And then --

10 A I gave him more than one time.

11 Q And then the next time was \$10,000; is that
12 correct?

13 A Yes.

14 Q Okay. And then you sold your store at Carlton
15 and at Glynn? You sold your two stores?

16 A I used what?

17 Q You sold your two stores, correct?

18 A Yes.

19 Q How much money did you give to Mr. Yusuf Fathi
20 Yusuf from that store?

21 A I give him whatever he asked me. \$200,000.

22 Q Do you recall that it was exactly \$200,000?

23 A Yes, sir.

24 Q Now, you said something about a million dollars
25 from Banco Popular, was that a loan?

1 A It's a loan he took from the bank.

2 Q Okay.

3 A I don't have no name. I told him -- he tell me
4 the bank they don't want nobody, so they have a partner
5 with the supermarket.

6 Q Okay.

7 MR. HARTMANN: I'm sorry, let him answer.

8 MR. DAVID: I'm letting him answer, sir.

9 I'm sorry, Judge, are we getting one lawyer here
10 or two?

11 MR. HARTMANN: I'm sorry.

12 MR. HOLT: But he needs to let him finish.

13 MR. DAVID: I apologize to the Court and to
14 counsel, and to the witness, sir.

15 THE COURT: That's fine.

16 BY MR. DAVID:

17 Q Please continue, sir.

18 A Yeah, They give us one million and They stop.
19 He come -- Fathi come to me and tell me, you know, how
20 much, Hamed we're going to be interest for that? I tell
21 him, no, you can take care of the office and I'm in the
22 warehouse I'm in charge in the warehouse so it's even.
23 He said \$16,000 a month, you pay 8. I tell him,
24 why not? I'm work with you even if I getting winner or I
25 get lose.

1 Q Okay.

2 A With sailboat. He said, okay, I want to know,
3 you know that. I tell him, okay, I know that.

4 Q Are you still working at the stores?

5 A Long time I retired.

6 Q Okay. Was there another loan for two and a half
7 million dollars?

8 A A what?

9 Q Was there another loan for two and a half
10 million dollars?

11 A Yes.

12 Q From whom?

13 A From the Bank of the Virgin Islands, Nova
14 Scotia, and then the other side, what you call it? I
15 forget the name.

16 Q Did you sign the loan documents?

17 A I'm not sign nothing.

18 Q So on the million-dollar loan that we talked
19 about you're not signed either?

20 A Fathi is the one, he sign. Mr. Yusuf the one he
21 sign with the loan, the first one and the second one.

22 Q Okay. Sir, did you sign an affidavit in this
23 case?

24 A For who?

25 Q Did you -- Do you know what an affidavit is,

1 sir?

2 A Affidavit I give my son.

3 Q What for? Why did you give your son an
4 affidavit?

5 A Why?

6 Q Yes, sir.

7 A Well, I forget at that time what he told me.
8 And he tell me sign the paper. He wants me, I sign it. I
9 give to him.

10 Q Did you read the paper before you signed it?

11 A He give me the paper.

12 Q Okay. Did you read the paper before you signed
13 it?

14 A I'm not read English, I tell you the truth.

15 MR. DAVID: I'm going to show him his
16 affidavit.

17 MR. HOLT: Sure.

18 BY MR. DAVID:

19 Q Okay. Sir, have you ever seen that piece of
20 paper before?

21 A Yes.

22 Q What is that?

23 A That's my signature in there.

24 Q Do you know what the letters, the words on the
25 paper say?

1 A Well, I need somebody to read it and they
2 explain to me in Arabic.

3 Q You can't read the words on that piece of paper?

4 A I can't read it.

5 Q Okay. Did you read it before you signed it?
6 Before you wrote your name on it --

7 A I tell me son -- I believe what they have in
8 there. He explain to me and I forget what he told me.

9 Q Okay. That's all I have.

10 You can take that back.

11 Fathi Yusuf is your partner?

12 A Yes.

13 Q Is Fathi Yusuf partners with Waleed?

14 A Ha?

15 Q Is Fathi Yusuf partners with Waleed, your son
16 Waleed?

17 A No. But he is my partner. I, not my son.

18 Q Your other sons are not partners with Fathi
19 Yusuf, correct?

20 A Yes. I'm his partner, not my son.

21 Q And if Mr. -- If Fathi Yusuf has something to
22 talk to you about the partnership, he is to talk to you,
23 correct?

24 A Yes.

25 Q And nobody else?

1 A Nobody else. If I die or I -- after I give my
2 son the power of attorney, yes, he could because I'm not
3 working. I getting old. I can't do nothing.

4 Q How long is your partnership with Mr. Yusuf
5 supposed to last? When does it end?

6 A Forever. We start with Mr. Yusuf with the
7 supermarket and we make money. He make money and I make
8 money, we stay together forever.

9 MR. DAVID: Okay. One moment, Your Honor, I
10 maybe done.

11 **(Discussion off the record.)**

12 BY MR. DAVID:

13 Q Sir, have you ever signed any -- strike that.
14 Are you aware that there is a lease?

15 A I don't know. I didn't hear you.

16 Q Is there a lease for the St. Thomas store?

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

21 A Mr. Fathi the one. He in charge for it.

22 Q What other stores is Mr. Fathi in charge of?

23 A For all the three store.

24 Q That's all I have, sir. Thank you.

25 A You're welcome.

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

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED

Plaintiffs,

vs.

FATHI YUSUF & UNITED CORPORATION,

Defendants,

YUSUF YUSUF, ZAYED YUSUF, &
ZEYAD YUSUF (f/k/a Syaid Yusuf)

Intervenors.

CASE # SX-12-CV-370

ORDER

THIS MATTER is before this Honorable Court on behalf of Intervenor Defendants' Motion for Expedited Resolution of Prior Motion to Intervene and a Stay of the Court's Order Dated April 25, 2013. The Court having considered the premises and after being fully advised, it is hereby

ORDERED that the Intervenor Defendants' Motion is **GRANTED**; and it is further;

ORDERED that the Motion to Intervene is **DENIED**; and it is finally

ORDERED that the Court's Order dated April 25, 2013 is **STAYED**.

SO ORDERED this _____ day of _____, 2013.

ENTER:

JUDGE OF THE SUPERIOR COURT

VENETIA H. VELAZQUEZ, ESQ.,
Clerk of the Court

By: _____
Deputy Clerk

cc: K. Glenda Cameron, Esq.
Nizar DeWood, Esq.
Joseph A. DiRuzzo, III, Esq.
Joel H. Holt, Esq.

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

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

**DEFENDANTS' MOTION TO CLARIFY
SCOPE OF PRELIMINARY INJUNCTION
AS TO UNITED'S FINANCIAL
STATEMENTS & UNRESTRICTED
ACCESS TO UNITED'S FINANCIAL
SYSTEMS**

**DEFENDANTS' MOTION TO CLARIFY SCOPE OF PRELIMINARY
INJUNCTION AS TO UNITED'S FINANCIAL STATEMENTS & UNRESTRICTED
ACCESS TO UNITED'S FINANCIAL SYSTEMS**

COME NOW, Defendants United Corporation and Fathi Yusuf and respectfully move this honorable court for an Order clarifying the scope of disclosure of United Corporation's financial statements, the intended use of the financial documents, and the dissemination of same. In addition, this Motion is necessary to preclude the now deadlocked management, and to address the endless false allegations by Plaintiff's designee concerning Defendants' compliance with the Court's Preliminary Injunction.

As grounds for said Motion, Plaintiffs rely on the attached Memorandum of Law in Support thereof, and Exhibits A - G annexed thereto. A proposed Order is attached herewith.

WHEREFORE, Defendants respectfully request an expedited hearing and an Order clarifying the scope of United's disclosure of financial statements.

Date: May 16, 2013

Respectfully Submitted,

DEWOOD LAW FIRM
Attorneys for Plaintiffs

By: */s/ Nizar A. DeWood*
Nizar A. DeWood, Esq.
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T. (340) 773-3444
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May, 2013, I caused a true and exact copy of the foregoing Motion To Clarify Scope of Preliminary Injunction regarding United's Financial Statements and Access to United's Financial Systems, Memorandum of Law and Exhibits A through G, and Proposed Order to be served on counsel for the Plaintiff at the below address via mail and email.

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Carl Hartmann, Esq.
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/s/ Nizar A. DeWood

Nizar A. DeWood

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

MOHAMMAD HAMED

Plaintiff

Vs.

**FATHI YUSUF
UNITED CORPORATION**

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

ORDER

ORDER

Before this Court is Defendants Motion to Clarify Scope of Preliminary Injunction regarding Access to United's Financial Statements, Computer Passwords, etc., an evidentiary hearing was held on the ____ day of _____, 2013; the Court duly apprised in the premises, and the Memorandum of Law in Support thereof, it is hereby

ORDERED that the Motion is **GRANTED**;

ORDERED that Defendant United Corporation shall provide revised financial statements for Plaza Extra Stores only within 30 day of date of this Order.

ORDERED that Defendant United Corporation's financial statements shall be used for internal purposes only, and may not be disseminated to any third parties without the written consent of United Corporation.

ORDERED that only mutual access of all sensitive financial data, records, financial statements shall be permitted.

ORDERED that copies of this Order be served on the parties of record.

ORDERED this _____ day of _____, 2013.

HON. DOUGLAS BRADY
SUPERIOR COURT JUDGE

ATTEST:

Venetia H. Velazquez, Esq.

Clerk of the Court

By: _____

DEPUTY CLERK

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO CLARIFY
SCOPE OF PRELIMINARY INJUNCTION
WITH RESPECT TO UNITED
CORPORATION'S FINANCIAL
STATEMENTS, AND ACCESS TO
UNITED'S FINANCIAL SYSTEMS

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO CLARIFY
SCOPE OF PRELIMINARY INJUNCTION WITH RESPECT TO UNITED
CORPORATION'S FINANCIAL STATEMENTS, AND ACCESS TO UNITED'S
FINANCIAL SYSTEMS**

COME NOW, Defendants United Corporation and Fathi Yusuf and respectfully file this Memorandum of Law in Support of Defendants' Motion to Clarify Scope of Preliminary Injunction Order with Respect to United Corporation's Financial Statements, right of access to sensitive financial data and trade secrets, access to passwords and computer codes, and third party access to United's financial statements. In light of the Court's preliminary injunction forcing a purported general partner, Defendant Yusuf, to jointly manage an at-will "partnership" with four designees of a disabled and retired partner, this Court should clarify its sweeping preliminary injunction with respect to 1) the scope of access to United's financial statements, 2)

the protection of passwords to critical financial systems, 3) the period of time United is required to provide a designee of Plaintiff Hamed with financial statements.

For the below reasons, that court should grant this Motion, and conduct a full evidentiary hearing to determine the appropriate parameters for disclosures of Defendant United's financial data and secrets.

I. PRELIMINARY BACKGROUND

On April 25th, 2013, this Court issued a Preliminary Injunction Order, which provides among other things:

ORDERED that the "operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years **prior to this commencement of this litigation**, with Hamed, or his designated representatives, and Yusuf, or his designated representatives, jointly managing each store, without unilateral action by either party, or representatives affecting the managing, employees, methods, procedures and operations.

Out of abundance of caution, Defendants seek clarification of this Court's order as to the dissemination of financial documents, trade secrets, access to its computers as well as to restrict which parties may view these materials.

More importantly, Defendants seek to address the continuous and baseless allegations of misconduct that seem to be Plaintiff's theme from day one in this litigation. Frankly, whether it is allegations of Defendant Yusuf "screaming" and "threatening" to close the stores, to baseless allegations of employee threats and intimidation, to allegations of Defendants finally crossing the "Rubicon" this Court has been unusually swayed by these sensational allegations without a single fact supporting them, other than the self-serving testimony of Waleed Hamed, Mufeed

Hamed, and Waheed Hamed. Unfortunately, this Court never noted that each of these individuals is the subject to a civil lawsuit for conversion, accounting, breach of contract, and unjust enrichment. What else will a Hamed designee testify to other than highly charged emotionally baseless allegations against Defendant Yusuf?

Now new allegations of the Defendants acting in bad faith is coming from Attorney Carl Hartmann as a pretext to Hisham Hamed's request for financial statements. This of course is to impart the impression of uncooperative Defendants who have no regard for this Court's Preliminary Injunction order. According to the Plaintiff, first, it was scary Defendant Yusuf shutting down everything and intimidating the employees and suppliers. Of course, these allegations were accepted by the court with nothing more than the oral testimony of Hamed designees who themselves are being sued for financial misconduct by the Defendants.

Now Plaintiff launch another sensation: Defendants refuse to respect the Court's order. This has forced Defendants to seek the Court's intervention in all matters that may be construed as falling within the ambit of the Court's Preliminary Injunction Order. As such, this Motion is appropriate to outline critical facts concerning the past management practices at United Corporation as they pertain to the operations of the Plaza Extra stores, and the need to maintain appropriate security and mechanism in place to resolve this case.

There is no dispute that Defendant Fathi Yusuf has always been the ultimate decision maker. This was the status quo then, and it should remain so now. The court order states in no uncertain terms in its Preliminary Injunction Order "that the "operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation." Preliminary Injunction Order.

Now Defendant Yusuf is forced to co-manage an at-will oral “partnership” with designees that are the subject of several lawsuits for accounting, conversion, breach of contract, and constructive trust. Additionally, as recently as March 17th, 2013, Waleed Hamed, Mufeed Hamed have displayed nothing short of contempt for the assets and funds of Plessen Enterprises, Inc. to enrich the personal interest. Waleed Hamed and Mufeed Hamed issued a check drawn on Plessen’s operating account causing Plessen to become immediately unable to pay its short term obligations. This behavior of Plaintiff’s own designees is the root cause of Defendants desire to cease their business relationship with Plaintiff Hamed.

While Defendants respectfully disagree with the Court’s sweeping Preliminary Injunction Order¹, Defendants desire to ensure that the terms of the Preliminary Injunction Order is clear. The current untenable situation between the purported general partner Defendant Yusuf and designees of Plaintiff Hamed has rendered operations of Plaza Extra impossible.

Based on the below points of facts and legal authority, and reincorporating the facts and arguments of Defendants’ May 9th, 2013 Motion to Modify the Preliminary Injunction Order to Terminate certain employees of United Corporation, Defendant respectfully request an immediate hearing to determine the scope of access to United’s financial systems and information.

I. FACTS

1. On September 17th, 2012, Mohammed Hamed filed a civil action against Defendants seeking a judicial declaration of a partnership, along with a Motion for Temporary

¹ Defendants have filed an Emergency Motion to Stay Enforcement of the Preliminary Injunction; Motion for Bond Redetermination, and a Motion to Permit the Termination of Employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez.

Restraining Order/or Preliminary Injunction. Plaintiff renewed same TRO Motion on January 8th, 2013.

2. On October 17th, 2012, Defendants filed a Rule 12(b)(6) Motion, which to date remains pending before this court.

3. On January 25th and February 1st, 2013, the Court held a hearing on Plaintiff's Preliminary Injunction. At the hearing, the following pertinent facts emerged:

- a. The parties entered into an oral agreement in 1986, where each party is entitled to fifty percent (50%) of the profits of the operations of the Plaza Extra stores.
- b. Defendant Fathi Yusuf has been the exclusive decision maker, and has undertaken all liabilities concerning the operations of the supermarkets.
- c. Defendant Fathi Yusuf has always been the sole decision maker. Plaintiff Hamed testified that Defendant Yusuf is in "charge of all three stores." *January 25th, 2013 TRO Hearing 210:21-24, EXHIBIT D.*
- d. In 1996, Plaintiff Hamed retired. A power of attorney was prepared authorizing Waleed Hamed to act on Plaintiff Hamed's behalf. Plaintiff Hamed testified that he "cannot do nothing" in the stores since 1996 because of his illness. *January 25th, 2013 TRO Hearing 210:21-24, EXHIBIT D.*
- e. In March 2012, Plaintiff received a document titled "Notice of Dissolution of Partnership." The Court acknowledged the dissolution notice, but noted that the parties did not agree to the terms. This notice of dissolution which would have effectively terminated the purported partnership was ignored by the court with respect to its legal effect.

4. On April 25th, 2013, the Court granted Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, and found that Plaintiff was likely to prevail on the merits concerning the existence of an at-will oral partnership.
5. On March 27th, 2013 Mufeed Hamed, and his brother Waleed Hamed, signed and executed a check in the amount of \$460,000 payable to Waleed Hamed drawn on an account from Plessen Enterprise, Inc. ("Plessen"). *See* Check No. 376 attached as **Exhibit C**.
6. Plessen Enterprises, Inc., ("Plessen") a duly organized Virgin Islands real estate holding company, saw its operating bank account effectively reduced to almost zero as a result of Mufeed Hamed and Waleed Hamed's unlawful conduct of issuing a check for \$460,000 without authorization or notice to Plessen for their personal gain.
7. Because of Mufeed and Waleed Hamed's unlawful conduct which demonstrates these employees lack of loyalty and diligence in matters relating to custody of funds, an appropriate civil suit has been filed, captioned as *Yusuf v. Waleed Hamed, Mufeed Hamed, et al.*, Case No. SX-13-CV-120 to vindicate Plessen's interest as well as those of its shareholders. This case remains pending and has been assigned to the Honorable Harold Willocks of the Virgin Islands Superior Court, St. Croix Division.
8. On May 9th, 2013, Defendants filed a Motion to Modify the April 25th, 2013 Preliminary Injunction Order to terminate the employment of Waleed Hamed, Mufeed Hamed, and

Wadda Charriez. The grounds for the termination of each of these employees is outlined in Defendants' Motion.

Plaintiff's New Allegations

9. On May 3rd, 2013, Plaintiff's son Hisham Hamed requested for the first time in 27 years a copy of financial statements for the Plaza Extra Stores. Although it is unclear as to why Hisham Hamed has taken a sudden and immediate interest in these financial statements. Hisham Hamed was advised by both Defendant United's President and Comptroller John Gaffney that same financial statements would be provided within the coming weeks.
10. When asked about the purpose of the financial statements, Hisham Hamed refused to answer. When Defendant United inquired as to which third parties these statement would be viewed by, Hisham Hamed still refused to answer, other than to say that the Court's order says so. See *Affidavit of Maher Yusuf*, **EXHIBIT A**. See *Affidavit of John Gaffney*, **EXHIBIT B**.
11. Between May 3rd and May 14th, 2013, an unexplained flurry of emails with numerous allegations were sent by Attorney Carl Hartmann to Defendants' counsels. These emails contained baseless accusations of Defendants' failure to abide by the terms of the Preliminary Injunction Order by refusing to provide Hisham Hamed with immediate financial statements.
12. Hisham Hamed then began requesting access to the passwords of critical financial systems. United Corporation became very concerned about Hisham Hamed's sudden interest to immediately access critical information without supervision, especially when

Hisham Hamed has never accessed the financial information on United's accounting systems. This concern arises out of the following series of events:

- a. On January 9th, 2013, United saw the unexplained loss of virtually its entire corporate files in its Plaza Extra Sion Farm location. Virtually every documents, bylaws, and corporate documents were completely removed from the Plaza Extra store in Sion Farm, St. Croix location. See *Affidavit of Maher Yusuf*, attached as **EXHIBIT A**.
 - b. On December 18th, 2012, United's St. Thomas accounting system was completely "wiped out" in the Tutu Park, St. Thomas location. Fortunately, accountant Ayman Khalid and comptroller John Gaffney had made a backup of the system, and were able to restore it on St. Croix. See *Affidavit of John Gaffney*, **EXHIBIT B**.
13. On May 9th, 2013, Attorney Carl Hartmann sent an email to the undersigned counsel alleging that United does not wish to provide Hisham Hamed with financial statements. See May 9th, 2013, Hartmann email as **EXHIBIT E**.
14. On May 10th, 2013, Attorney Hartmann sent another email. This time with more sensational hearsay allegations by no one other Hisham Hamed. See May 9th, 2013, Hartmann email as **EXHIBIT F**.
15. In a span of a week, there has been a concerted effort to portray Defendants as defying the Court's Preliminary Order.

16. Each of the allegations in those emails are over exaggerated and conceal Defendants own valid concerns as to the use, access, and security of Defendant United's systems. *See Affidavit of Maher Yusuf, EXHIBIT A.*
17. With major civil actions pending against Plaintiff Hamed's designees Waleed Hamed, Mufeed Hamed, and Waheed Hamed, Defendant United inquired of Hisham Hamed about the need to properly supervise all access to its financial information, computers, and systems.
18. To date, Plaintiff Hamed has not set foot in any of the stores, and is virtually without knowledge as to a single fact on the ground at any of the Plaza Extra Stores, other than through what his designees tell him. The same designees who are the subject of numerous law suits for various misconduct, and are at extreme odds with the purported managing partner.
19. With these security breaches occurring, and with the Court's Preliminary Injunction Order essentially forcing Defendant Yusuf to work jointly with designees who are accused of embezzlement of funds, Defendants seek a Court order restricting the access to sensitive financial information, and limit the supervision of all parties.

II. ISSUES

1. Whether the Court should clarify the April 25th, 2013 Preliminary Injunction Order, and order proper security measures for Defendant United's financial systems, documents, and restrict the access of these information to the proper parties?

III. ARGUMENTS

A. Standard of Review: Modifying Preliminary Injunction Orders

A court can modify a preliminary injunction order for reasons of equity in light of changes in the facts or for any other good reason. *Loudner v. U.S.*, 200 F.Supp. 2d 1146, 1148 (D. S.D. 2002). As the Ninth Circuit explained, “[a] district court has inherent authority to modify a preliminary injunction in consideration of new facts.” *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir.2002) (citing *Sys. Fed'n No. 91, Ry. Employees' Dep't v. Wright*, 364 U.S. 642, 647–48, 81 S. Ct. 368, 5 L.Ed.2d 349 (1961); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir.1963)).

In Third Circuit, modification of preliminary injunction is proper only when there has been change of circumstances between entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable....*Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000).

Because of changed factual circumstances, mainly the sudden and inexplicable immediate demand for financial statements, access to United's financial systems, and in light of previous security breaches, this court may conduct a hearing to determine the scope of access and third party supervision of United's financial systems.

B. With Deadlocked management, the Court must issue an order clarifying the scope and access to Defendant United's financial systems.

As stated in Defendants' previous Motions, it is well settled that partners may agree that one or more of them will have exclusive control over the management of the partnership business, so that a managing partner, a designated number of named partners, senior partners, or

voting partners can be given the exclusive control of the partnership business. Here, the record is clear that Defendant Fathi Yusuf² is the person responsible for all management decisions, and the operation of the three Plaza Extra Stores as illustrated by Plaintiff Hamed's own testimony "**Mr. Fathi the one. He in charge for it**" and that Defendant Yusuf is in charge "**for all the three store.**" January 25th, 2013 TRO Hearing 210:21-24, **EXHIBIT D.** (Emphasis Supplied). "**Mr. Yusuf he is in charge for everybody**". January 25th, 2013 TRO Hearing p. 201:2-5, **EXHIBIT E.** (Emphasis Supplied).

C. Because Plaintiff Hamed has never managed the affairs of the Purported "Yusuf and Hamed" Partnership, and to be unable to do so, the Court must clarify how Plaintiff's designees may access critical financial systems belonging to Defendant United.

Even when the Court declared the likelihood of the existence of an at-will oral partnership, the Court did not consider the fact that Plaintiff Hamed is utterly incapable of managing the affairs of this previously non extant "Yusuf & Hamed partnership." As Plaintiff Hamed has stated so eloquently, "**getting old. I can't do nothing.**"

This Court also failed to consider that the Preliminary Injunction Order has resulted in the untenable situation of forcing Defendant Yusuf, who by the Court's own finding is a full purported partner, to manage the store with three Hamed designees whose personal interests are at extreme odds with those of Defendant Yusuf. In its Preliminary Injunction Memorandum Opinion the Court's quick reference to allegations of financial misconduct by designee Waleed Hamed failed to appreciate the conflict that has made management impossible.

² The Court has deemed for purposes of the Preliminary Injunction that Fathi Yusuf is a purported partner of a partnership called the "Yusuf and Hamed" partnership.

Thus before the Court is the following question: How can the Court force a partner to work with the other partner's designee who being accused of outright theft and are the subject of numerous lawsuits by the managing partner?

D. A Clarifying Order is Necessary to Protect The Confidential Financial Information of Untied Corporation.

At this point, before the Court is the following surreal situation:

1. A purported partner, Mohammed Hamed who "can't do nothing" has appointed four designees, three designees of which are the subject of various lawsuits for accounting, conversion, breach of contract, and constructive trust.

2. The disappearance of United's entire corporate file from the Plaza Extra – East store, especially when these files have existed for decades without problem, only to conveniently disappear at the outset of the dispute between Defendant Yusuf had with Waleed Hamed regarding defalcated funds.

4. The unexplained computer failure of the financial system on December 15th, 2012, and the unusual inquiry by Waheed Hamed for a backup of the data. This is especially suspect since Waheed Hamed had never utilized the computer system containing virtually all of the financial records of Plaza Extra.

See *Affidavit of Maher Yusuf*, **EXHIBIT A**; See *Affidavit of John Gaffney*, **EXHIBIT B**.

It is well established that the power to manage a partnership is not a delegable power that a partner can simply assign to another person without the express consent of the other managing "partner" especially one as Defendant Yusuf who from the outset of this joint venture /

partnership / business agreement has been the driving force in managing all affairs of the Plaza Extra operations.

Here, Waleed Hamed is asked to explain how he acquired millions of dollars' worth of securities listed in detailed fashion in his 1992 and 1993 Tax Returns. Defendant Hamed not only refuses to provide an explanation to his employer, but has taken it upon himself to defend his position by filing procedural defenses, instead of coming forward with a full accounting and documents addressing Defendants concerns. To expect a managing partner to co-manage an operation with someone he views as having defalcated substantial assets from the operations of the Plaza Extra Stores is untenable. As such, appropriate restrictions must be placed to ensure that all financial information, passwords, and passcodes are properly protected.

IV. CONCLUSION

The Court should enter a detailed and clear Order protecting the financial statements, computer and accounting systems of United Corporation. The Court's Preliminary Injunction Order is vague as to these issues. Further, because the Court is now forcing a purported managing partner to operate a business with Plaintiff designees that are the subject of several lawsuits for conversion, theft, and breach of contract, among others, the Court should clarify the scope of access to United's financial statements.

Finally, Plaintiff Mohammed has made clear that he "cannot do nothing" in reference to his ability to manage any of the affairs of the partnership or joint venture. This has been the case for the last 17 years. Plaintiff Mohammed Hamed's designees are now engaged in numerous civil actions with the Defendants. Because the Court is now forcing Defendant Fathi Yusuf to

maintain a working relationship with Plaintiff Hamed's designees who have engaged in various misconduct, the Court should immediately reconsider its April 25th, 2013 Preliminary Injunction Order.


As such, the Court should grant this Motion to Modify the Preliminary Injunction Order, and allow Defendant Yusuf to exercise his full rights, whether as the sole general managing "partner" or as a corporate officer of United Corporation.

Date: May 16, 2013

Respectfully Submitted,

DEWOOD LAW FIRM
Attorneys for Plaintiff

By: _____


(VI bar No. 1177)
2006 Eastern Suburbs, Suite 102
Christiansted, V.I. 00820
T. (340) 773-3444
F. (888) 398-8428

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May, 2013, I caused a true and exact copy of the foregoing Motion to Clarify and Proposed Order to be served on counsel for the Plaintiff at the below address and by email.

**Joel H. Holt
Law Office of Joel H. Holt
2132 Company Street
Christiansted, VI 00820**

**Carl Hartmann, III
5000 Estate Coakley Bay, L-6,
Christiansted, St. Croix, VI 00820**

/s/ Nizar A. DeWood

Nizar A. DeWood

EXHIBIT

A

AFFIDAVIT OF MAHER YUSUF

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

AFFIDAVIT OF MAHER YUSUF

AFFIDAVIT OF MAHER YUSUF

I, Maher Yusuf, pursuant to 28 USC §1746, under penalty of perjury, attest that,

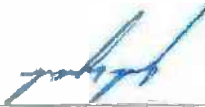
1. I am the President for United Corporation, and I manage the Plaza Extra – West store.
2. On May 3rd, 2013, Hisham Hamed asked for financial statements from John Gaffney for all three Plaza Extra stores. Mr. Hamed brought a copy of the court order and memorandum opinion along with his request. After May 4th, Hisham began making these requests on a daily basis.
3. I have worked with Hisham Hamed for the last 12 years. Hisham has never made a single request for financial statements. He certainly never made these requests on a daily basis. Also, he has never asked for the password for the accounting system. Hisham has no training on how to use the system.
4. I also advised Hisham that United Corporation has never issued financial statements for Plaza Extra stores, and to do so would require more time. Despite that I instructed John

Gaffney to provide him with the available profits & loss statements for 2011 which dealt with the operations of the Plaza Extra Stores.

5. Hisham's sudden requests and refusal to discuss any restrictions on the use of the financial statements and unrestricted access to the accounting system has raised serious security concerns especially because of the complete meltdown of our financial system and computer in the Plaza Extra Store in St. Thomas on December 18th, 2012. At that time, the hard drive failed inexplicably and completely. If it was not for the backup that our controller John Gaffney put in place, we would have lost virtually everything, including tax records, and employee records among other things.
6. I told Hisham Hamed that providing password with full access to a vital financial system raises serious concerns. I asked why he wanted all of this access so suddenly, he refused to answer. He would not even agree to discuss a supervised access of the accounting system.
7. Moreover, on January 9th, 2013, I noticed that the entire United Corporation file went missing from the Plaza Extra – East store. Not a single document could be found of the original bylaws, corporate charter, and other critical documents. These documents have existed for decades without problem.
8. I approached Wadda Charriez, the office manager about the file. She stated that Waleed Hamed had the file. I asked Waleed Hamed about the file, he told me that he did not have it, and to check back with Wadda Charriez.
9. It is unfortunate that United's original file would go missing and conveniently disappear after the dispute arose between United and Fathi Yusuf arose with Waleed Hamed.
10. With a missing large file with all of United Corporation's original documents, and a destroyed computer drive in December of 2012, the court must protect the unobstructed access of United's critical financial systems.
11. At this point, United has two pending lawsuits against Waleed Hamed and Waheed Hamed because of missing funds, and other conduct. This makes it next to impossible to provide Hisham Hamed with unrestricted access to United's accounting system.
12. To ensure that United does not act in a manner contrary to the court order, United is filing the Motion to clarify the preliminary injunction to obtain an Order from the court to protect United's financial system

13. Security of United Corporation's financial systems is very important and should not be given to untrained managers or individuals without proper supervision. The court should put in place the proper restrictions, including who may access such financial information and systems and under whose supervision.

Date: May 15, 2013



Maher Yusuf, as president of United Corporation

EXHIBIT

B

AFFIDAVIT OF JOHN GAFFNEY

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

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

AFFIDAVIT OF JOHN GAFFNEY

AFFIDAVIT OF JOHN GAFFNEY

I, John Gaffney, pursuant to 28 USC §1746, under penalty of perjury, attest that,

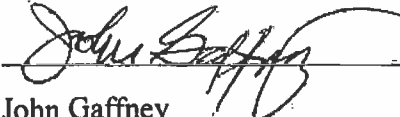
1. I am the Comptroller for United Corporation, and as such I am aware of the facts contained herein.
2. On May 3rd 2013, Hisham Hamed requested financial statements for the Plaza Extra stores in writing along with a copy of recent court order and memorandum opinion, his request was also for a system password.
3. I advised him that I would have the Profits & Loss statements for 2011 ready shortly. As to 2012, I advised him that I would require an additional two months. The reason for this brief delay is due to the fact that United's accounting system is still being implemented, and much of the information for the last two months of 2012 was not provided from the previous comptroller as initially agreed.
4. In addition, I have spent significant time to implement the proper accounting system, training of employees, and record reconciliation which is required by the Plea Agreement.

5. Then Hisham Hamed requested the password to Peachtree Accounting database. Hisham's requests for financials and passwords were a daily occurrence. At one point, I told him I didn't think the provision of system passwords should come from me.
6. As an accountant for almost 40 years, it is highly unusual for a manager to request access to the entire financial database. The reason being is to preclude tampering, and avoid unauthorized access that may occur when system is not logged off. Most importantly, it prevents the corruption of the database.
7. Hisham has not indicated to me why he needs the password to the accounting system, especially after the sudden and unexplained failure of the system in the Plaza Extra Store in St. Thomas. I implemented a backup system when I began my employment in October of 2012. Were it not my specific instructions to Nejeih Yusuf, one of the managers of the Plaza Extra store in St. Thomas, United would have lost virtually all accounting and financial information.
8. Notwithstanding the backup, we did lose some vital support records and had to reconstruct other work
9. On December 18th, 2012, I was advised that the entire hard drive crashed. I have requested Waheed Hamed to provide me with the actual drive to send to a hard drive retrieval service in Florida.
10. If it wasn't for the backup it would have been virtually impossible to do any of the regulatory quarterly VIESA report, W-2s for 2012 for the employees, and other tax obligations of United Corporation.
11. On December 24th, 2013, I asked Ayman Khaled to obtain the hard drive so we could attempt data recovery. Ayman made repeated requests to Waheed Hamed, but the hard drive was never provided to me, nor to any of United's corporate officers.
12. Security and redundancy are paramount in every accounting system. Passwords to such critical financial systems should not be given to untrained managers or individuals without proper supervision. Messers. Hamed have no general accounting training and have no specific training related to the financial databases that are the subject of the passwords they seek. This lack of training and inability to operate the systems properly will likely lead to corruption of the databases and a myriad of problems that will result from such corruption.

13. While the Hamed designees are entitled to view information, and request copies of reports, data, and completed financial statements, providing direct access to the computer databases of a financial system could easily result in the same being compromised. As such, providing a password to untrained and unfamiliar persons is against sound financial and management policy.

14. I attest that the above is true to the best of my knowledge.

Date: May 15, 2013


John Gaffney

EXHIBIT

C

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PLESSEN ENTERPRISES, INC.
P.O. BOX 763
C STED., VI 00821

0376
101-606-218

PAY TO THE ORDER OF Waleed Hamed

30585-002 045
THE BANK OF NOVA SCOTIA
BY DEPOSIT
MAR 27 2013
\$460,000.00
DOLLARS

Scotiabank
THE BANK OF NOVA SCOTIA
1400 BAY ST. ST. JOHN'S, NL A1A 1A1

FOR [Redacted] *[Signature]*

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EXHIBIT

D

January 25th, 2013 TRO Hearing 210:21-24

1 A Nobody else. If I die or I -- after I give my
2 son the power of attorney, yes, he could because I'm not
3 working. I getting old. I can't do nothing.

4 Q How long is your partnership with Mr. Yusuf
5 supposed to last? When does it end?

6 A Forever. We start with Mr. Yusuf with the
7 supermarket and we make money. He make money and I make
8 money, we stay together forever.

9 MR. DAVID: Okay. One moment, Your Honor, I
10 maybe done.

11 **(Discussion off the record.)**

12 BY MR. DAVID:

13 Q Sir, have you ever signed any -- strike that.
14 Are you aware that there is a lease?

15 A I don't know. I didn't hear you.

16 Q Is there a lease for the St. Thomas store?

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

21 A Mr. Fathi the one. He in charge for it.

22 Q What other stores is Mr. Fathi in charge of?

23 A For all the three store.

24 Q That's all I have, sir. Thank you.

25 A You're welcome.

EXHIBIT

E

January 25th, 2013 TRO Hearing p. 201:2-5

1 A Yes, sir.

2 Q And who is your oldest son? Who is your oldest
3 son?

4 A Mr. Yusuf he is in charge for everybody.

5 Q What is your oldest son's name? Who is your
6 oldest son?

7 A My oldest son is Waleed Hamed.

8 Q And did there come a time that you stopped
9 working in the business every day?

10 A No.

11 Q Okay. Tell me what you did in the business?

12 A He used to work with me and in the supermarket,
13 without payment before we open. They build a beam and
14 they have somebody from St. Lucia, Charlie, he used to
15 work, and he will help him hold the beam with him until 12
16 o'clock in the night.

17 Q Okay. After a while did you get the supermarket
18 open?

19 A After the work in the supermarket.

20 Q Okay.

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.

25 Q Okay.

EXHIBIT

F

EMAIL from Carl Hartmann dated May 9th, 2013

From: [Carl Hartmann](#)
To: dewoodlaw@gmail.com
Subject: A very polite request
Date: Thursday, May 09, 2013 9:40:18 AM

<http://www.federal-litigation.com/Cases/Jackson%20Contempt%20Brief.pdf>

[<shawnhamed@yahoo.com>](mailto:shawnhamed@yahoo.com)

shawnhamed@yahoo.com>

johnhaffney@tampabay.rr.com>

mike@plazaextra.com>

John,

I want to thank you for informing me that in a couple days you should have 2011 financials that I requested to me, I will follow up with you on Tuesday. Also for letting me know that you are working with Margie to finish off Nov and Dec of 2012, and that if she doesn't do it you will, and get it to me. However, I am somewhat concerned about your responses to my requests on the passwords and access -- where you said that I had to ask Mike or Ayman. I want to make it very clear from the start that neither of them can direct you to keep materials related to Plaza Extra Supermarkets from me. Please respond in writing that you will comply with my request -- or explain in a responsive email why you will not. Should you wish to meet with Mike and myself to clear this up, please set up a meeting convenient for the two of you and I will attend. I will make myself available anytime. We have to return to working jointly and not having secrets and secret instructions internally.

Regards,

Hisham (Shawn) Hamed

Plaza Extra West
US Virgin Islands
Tel: 340.719-1870
Fax: 340.719-1874

Confidentiality Notice: The information contained in and transmitted with this communication is strictly confidential, is intended only for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any use of the information contained in or transmitted with the communication or dissemination, distribution, or copying of this communication is strictly prohibited by law. If you have received this communication in error, immediately return this communication to the sender and delete the original message and any copy of it in your possession.

)

EXHIBIT

G

EMAIL from Carl Hartmann dated May 13th, 2013

Nizar A. DeWood, Esq.

From:
Sent:
To:
Cc:
Subject:

Attorney Massabki, Attorney DiRuzzo and Attorney DeWood:

I was traveling back to St. Croix, and responded to Attorney Massabki's email with the message below before I had a chance to talk to the client. My client informs me that while the 2011 financials were provided today (for which I thank you), three problems still remain:

1. There were no 2012 financials. As I said – they need not be in final form – whatever your client has needs to be provided immediately,
2. When the designee asked Mr. Gaffney for the financials, he was told the following – which is a violation of the Court's order. This must stop. Mr. Gaffney is now and has always been paid from Plaza Extra Supermarket accounts. In the hearing, he was asked if he even worked on United materials and he said "no." A request will be made courteously and professionally tomorrow for the 2012 financials in whatever form they are in. So your responsive letter should explain the contempt of any continuing refusal in clear, precise detail.

Gaffney stated that he reports only to Mike. When I asked Mike for them he asked me to sign that I received it after I signed them he gave me a cover letter stating it is for management purposes only and not to be used in litigation or a third party. Reports have a footer on each page stating for management purposes only.

3. The idea that your client is affixing restraining language or legends on the very most basic management materials is error for two reasons. First, your client has no more right to the basic financials of the stores than does mine – and thus cannot "condition" turnover. Second, your client has obviously instructed Mr. Gaffney of the same thing – more contempt. Again, please address what legal right exists for this under the order in your responsive letter.

Not that it is any of your client's business, but the immediate use is not for litigation. Folks are actually still trying to do business and operate in the real world. But that hardly matters, as the conditions are meritless. I will expect the 2012 materials completed to date, plus the related documents I have requested will be turned over tomorrow.

Thank you.

Carl Hartmann

From: Carl Hartmann [mailto:carl@carlhartmann.com]
Sent: Monday, May 13, 2013 7:36 PM

To: Frank Massabki
Cc: Joel Holt; Japinga KiM
Subject: Re: Hameds v. Yusufs/United Corporation - response to May 11, 2013 e-mail

Please attach the financials if they were not provided today.

Carl
carl@carlhartmann.com

On May 13, 2013, at 7:11 PM, Frank Massabki <FMassabki@fuerstlaw.com> wrote:

Dear Attorney Hartmann:

I understand that you sent to Attorney DiRuzzo an e-mail dated May 11, 2013.

Attorney DiRuzzo will be out of the office for the next few days on business travel.

Nevertheless, please note that we will be providing a substantive response to your e-mail by tomorrow.

In the interim, please feel free to contact me via reply e-mail or telephone at (305) 350-5690.

Thank you.

Frank Massabki, Esq.
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd Floor
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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF AND UNITED CORPORATION	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendant.	)	JURY TRIAL DEMANDED
)	

**OPPOSITION TO DEFENDANTS' EMERGENCY MOTION TO
STAY PRELIMINARY INJUNCTION**

The plaintiff, Mohammad Hamed, hereby responds to defendants' motion to stay the preliminary injunction issued in this case. Presumably defendants filed pursuant to Rule 62(c). That rule deals with stays of an injunction pending appeal, as the defendants have also filed a notice of appeal.

Without any evidentiary support, the defendants claim the preliminary injunction has caused it economic chaos, with secured and unsecured creditors "flapping in the wind," but those claims are unsupported by any affidavits or other evidence and in fact are untrue. See **Exhibit 1**. Likewise, the suggestion that the day-to-day supermarket operations will "grind to a halt" with the loss of "good will" as a result of the injunction is also unsupported by the evidence and is without merit. See **Exhibit 1**. Indeed, the only problem with the injunction to date is the defendants' failure to comply with it, which violations the plaintiff is trying to amicably resolve. See, e.g., **Exhibit 2**.

With this comment in mind, it is respectfully submitted that the motion be denied for the reasons set forth herein.

I. Applicable Standard For Reviewing Motions To Stay

The United States Supreme Court has succinctly set forth the standard for addressing motions to stay an order or judgment in *Hilton v. Braunskill*, 481 U.S. 770 (1987) as follows:

Different Rules of Procedure govern the power of district courts and courts of appeals to stay an order pending appeal. See Fed.Rule Civ.Proc. 62(c); Fed.Rule App.Proc. 8(a). Under both Rules, however, the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Id* at 776.

With this standard in mind, the plaintiff will now address the defendants' motion.

II. Defendants have not made a strong showing they will prevail on the merits

In order to prevail on this issue, defendants need to make a "strong showing" they will prevail on the merits of the case, a difficult hurdle to overcome. In their motion, the defendants raise multiple arguments that have already been extensively briefed before this Court. As such, plaintiff will only briefly respond to these issues, which will be addressed in the order raised on pp. 6-12 of defendants' motion regarding the "likelihood of success on the merits."

1. "Damages Case"

The defendants argue that this is just a "damages case" so that equitable relief in the form of an injunction is improper. This Court took note of that assertion in Conclusion ¶ 18 at p. 19 of its Memorandum Opinion. This Court then established what is needed to demonstrate irreparable harm in Conclusion ¶ 19. After taking note of the

plaintiff's reasons for seeking injunctive relief in Conclusion ¶ 20, the Court explained in Conclusions ¶¶ 21-22 why the evidence in this case demonstrated that the plaintiff would suffer irreparable harm if injunctive relief were not granted, finding that such relief was warranted. Thus, these Conclusions explain why this is not just a damages case, so that basis for seeking a stay is without merit.

2. Statute of Frauds

The statute of frauds issue was extensively briefed by the plaintiff in his pre-hearing pleadings, as well as in his proposed findings of fact -- which are incorporated herein by reference. This Court then addressed this issue in Conclusions ¶¶ 6 and 7, p. 15, explaining why this defense was not applicable. Again, the Court's ruling on this issue explains why this basis for seeking a stay is without merit, so no further discussion of this issue is warranted.

3. Statute of Limitations

The statute of limitations defense was not previously raised in this case, nor was it raised in the pending motion for reconsideration of the preliminary injunction order. Thus, it is difficult to understand why it supports a new finding that the defendants have a strong likelihood of prevailing on the merits of this issue. In any event, Mohammad Hamed's claims are clearly not barred by the statute of limitations, as the partnership is still operational.

Indeed, Maher Yusuf (testifying as the President of United) stated at the January 25, 2013 hearing that his father and Mr. Hamed had a *presently effective* agreement to operate the three Plaza Extra Supermarkets (See 1/25 Tr at p 214:2-15):

Q Why are you sending the notices to Mohammed Hamed?

A Because Mohammad Hamed has a business agreement.

Q So he does have a business agreement?

A He does have a business agreement.

Q To operate the store?

A To operate the store.

Q And you understand the agreement is to share the profits 50/50?

A Yes.

Q And you're still sending these letters to Mr. Hamed in 2012 and 2013, so take it that business agreement is still in place?

A As far as I know.

Moreover, the violations of Hamed's partnership rights all occurred in 2012 and 2013, as noted in the hearing testimony and this Court's findings.

The defendants' motion also refers to Fathi Yusuf divesting himself of his interest in United, but the critical transfer of Yusuf's stock where he diluted his interest to 7.5% (which this Court found to be relevant in Finding ¶ 41, p. 12) was not known to Mr. Hamed until after this case was filed in 2012, so why the defendants think this issue is barred by the statute of limitations is unknown.¹

¹ This dilution of Yusuf's interest in United from a majority owner to a minority owner was first raised in pleadings in this case, as noted in the plaintiff's proposed findings:

96. The defendants have averred in pleadings before this Court that Yusuf recently diluted his ownership in United down to just 7.5%, arguing on page 11 of the defendants Rule 12 opposition memorandum (PEX 2, p 11) as follows:

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammad Hamed would be entitled to is a fifty percent (50%) share of **Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks.** (Emphasis added.)

Thus, the statute of limitations defense is not a valid defense, even if it had been timely raised, as the plaintiff's alleged breach of the partnership agreement all stem out of conduct that occurred in 2012 and 2013. As such, this argument does not support the entry of a stay of this Court's Order.

4. Retirement of Mohammad Hamed

The defendants' argue that the retirement of Mohammad Hamed is the equivalent of him withdrawing from the partnership and terminating his interest in the partnership, supposedly making him nothing more than a "creditor" of the partnership. Again, this argument was not previously raised.

In any event, while Hamed did not participate in the supermarket operations on a day-to-day basis after 1996, he testified that he gave his eldest son, Wally Hamed, a power of attorney to act for him and to undertake his responsibilities. Several years later Fahti Yusuf provided both sworn testimony and discovery responses stating that he acknowledged that Wally was acting for his father pursuant to this power of attorney. *Thus, Yusuf clearly agreed that the partnership was operating under these conditions.*²

² This issue was addressed at the hearing, as noted in Plaintiff's Proposed Findings and Conclusions ¶¶ 24-25:

24. In that litigation, Yusuf signed an affidavit stating in ¶¶ 2-5, and 7 as follows (Depo Exhibit 6 to PEx 1):

- Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage his interests for the family.

25. Consistent with Yusuf's affidavit, both Mohammad and Waleed Hamed testified -- and the Court finds -- that Hamed and Yusuf agreed that Waleed Hamed a/k/a Wally Hamed, would act on his father's behalf as to Hamed's partnership rights and obligations pursuant to a power of attorney. 1/25 Tr, pp 46:1-10; 47:5-7; 47:18-48:2 and 202:18-25.

This Court then found as follows at Finding ¶ 31 on p. 9:

31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr. 45:24-48:2; 172:6-1 73:8; 202: 1 8-25, Jan. 25, 2013; Pl. Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh. 6, 4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6-35:11, Jan. 25, 2013.*

As such, the facts do not support a finding that the plaintiff had withdrawn from the partnership or terminated his interest. Indeed, Yusuf has never submitted any sworn statements to this effect either.

In short, this is just another (belated) “lawyer created” argument unsupported by any facts, so that this issue does not support the entry of a stay either.

5. Partnership Distributions

This Court found in Conclusion ¶ 13, pp. 17-18, that the plaintiff and Fathi Yusuf not only agreed to share profits, but in fact shared such profits from the supermarket operations. Defendants have both admitted this repeatedly, stating that not only is Mr. Hamed entitled to such profits -- but *has received them to date*. For example, in defendants' memorandum in support of their Rule 12 motion, the defendants admitted this (D.V.I. Docket No. 29 at p. 3)(emphasis added):

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.**

As a result to these admissions, this Court stated in Finding ¶ 15 at 5 (emphasis added):

Yusuf has admitted in this case that he and Hamed "entered into an oral joint venture agreement" in 1986 by which Hamed provided a "loan" of \$225,000 and a cash payment of \$175,000 in exchange for which "Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets" in addition to the "loan" repayment. **Yusuf states** that the parties' agreement provided for "a 50/50 split of the profits of the Plaza Extra Supermarket stores." *Pl. Ex. 2, p.3,4*. Indeed, **Yusuf confirms** that "[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store **The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.**" *Pl. Ex. 3, p.11*.

Even United's President, Maher Yusuf, conceded this fact. 1/25 Tr at p 214:2-11.³

As such, there was ample evidence of partnership distributions.⁴ Thus, this aspect of the defendants' motion must be denied as well.

³ Indeed, defendants admit on page 3 of their companion *Motion to Reconsider and Modify Preliminary Injunction to Terminate Employees Mufeed Hamed, Waleed Hamed and Wadda Charriez* (filed at the same time as this motion) that they previously agreed in arguments to this Court that Mohammad Hamed is entitled to 50% of the profits of the operations of the Plaza Extra Supermarkets.

⁴ As set forth in the plaintiff's proposed findings submitted to this Court, there is un-refuted testimony that these profits were split 50/50 between the plaintiff and Yusuf:

32. Over the years, Hamed and Yusuf have jointly shared the profits and losses. 1/25 Tr, p 44:12-15.

33. They shared profits from the Plaza Extra Supermarket operations in part by using them to purchase multiple properties throughout the Virgin Islands, including the real property where Plaza West is located, always splitting the ownership of these properties 50/50, with members of the each family owning 50% of each such corporation used to buy the properties. 1/25 Tr, pp 39:11-41:13.

6. Partnership “Termination”

This issue was addressed on pages 3 to 5 of the plaintiff’s response to the defendants’ motion for reconsideration or to modify the injunction, filed at the same time as this response. That argument is incorporated herein by reference, as there is no need to repeat it in full once again. As noted therein, this issue is also without merit.

III. The defendants are not irreparably harmed by the preliminary injunction

The defendants argue that they are irreparably harmed by the preliminary injunction, but they failed to submit any evidence to support this assertion. How can the Court even be expected to consider this critical issue without any evidence being proffered by the defendants to support these assertions? In any event, the dire consequences the defendants assert have created “irreparable harm” to them have not in fact occurred. See **Exhibit 1**.

Thus, despite their rhetoric, the defendants have not offered any evidence that would support a finding of irreparable harm to them as a result of the preliminary injunction, which only re-established the status quo that has existed for decades in running these very successful supermarkets.

IV. The preliminary injunction does not substantially injure other parties

The defendants failed to even address this issue, arguing instead that there would be no irreparable injury to the plaintiff if the motion to stay was granted. Of course, this assertion is directly contrary to the findings made by this Court, which found that the plaintiff would be irreparably harmed if the relief sought was not granted.

In any event, the defendants have made no showing that the preliminary injunction substantially injures any other party, so this factor is totally unsupported by any evidence as well.

V. The public interest lies with the issuance of the injunctive relief.

This Court fully addressed the public interest in Conclusions ¶¶ 26 and 27, p. 22. The defendants' bald assertion that these three stores will now close and these employees will be laid off is unsupported by any evidence. In fact, these three stores are all open and these employees all continue to be fully employed today. See **Exhibit 1**. As such, this argument is without merit as well.

VI. Rule 65(c)

This issue was addressed in full in the plaintiff's response to the defendants' motion challenging the bond required in this case, filed at the same time as this response. That argument is incorporated herein by reference, as there is not a need to repeat it in full here. As noted therein, this issue is also without merit.

VII. The Pending Rule 12 Motion

The defendants argue that this Court should have ruled on the pending Rule 12 motion before addressing the injunction issue. While a court may chose to proceed in that fashion, there is no requirement that it do so. In fact, the defendant did request such a ruling during the hearing or prior to the entry of the preliminary injunction.

Moreover, the Court's ruling makes it clear that the plaintiff has stated a viable claim and that he is likely to succeed on that claim, demonstrating that the pending Rule 12 motion is without merit and should be summarily denied. Indeed, the defendants'

Rule 12 memorandum as well as their reply memorandum both concede that the plaintiff is entitled to 50% of the profits, as repeatedly noted. Likewise, the plaintiff's opposition to the defendants' Rule 12 motion also makes it clear why that motion should be denied.

In any event, the fact that this motion is pending does not support the entry of a stay, particularly since it obviously has no merit.

VIII. Conclusion

As noted in *Millennium Pipeline Co., L.L.C. v. Certain Permanent and Temporary Easements*, 812 F.Supp.2d 273 (W.D.N.Y. 2011):

As one court has observed, "[l]ogic dictates that a court will seldom [issue an order or judgment and] then turn around and grant [a stay] pending appeal, finding, in part, that the party seeking [the stay] is likely to prevail on appeal, i.e. that it is likely that the court erred in [issuing the underlying order or judgment]." *Id.* at 275.

For the reasons set forth herein, it is respectfully submitted that this case falls within the mainstream of such motions, so that the motion to stay the preliminary injunction should be denied.

Dated: May 16, 2013



Joel H. Holt, Esq.
2132 Company Street
St. Croix, VI 00820
(340) 773-8709
Email: holtvi@aol.com

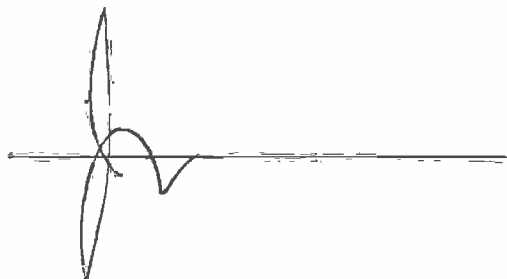
Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-442

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2013, I caused a true and exact copy of the foregoing to be served by mail and email to:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
305-350-5690
Email: jdiruzzo@fuerstlaw.com

NIZAR A. DEWOOD
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
340-773-3444
Email: dewoodlaw@gmail.com

A handwritten signature in black ink, appearing to read "Nizar A. Dewood", is written over a horizontal line. The signature is stylized with a large, looped initial "N" and a long horizontal stroke extending to the right.

IN THE SUPERIOR 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.)

CIVIL NO. SX-12-CV- 370

ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

DECLARATION OF WALEED HAMED

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C.

Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. Despite the defendants telling this Court that there are problems with secured and unsecured creditors, no such problems exist, as all creditors are being paid in the normal course of business. Indeed, no creditor has questioned anything regarding this Court's order.
3. The three Plaza Extra Supermarkets are open as usual, with all 600 employees working as scheduled, without any negative feedback from the employees or the public.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 16, 2013



Waleed Hamed a/k/a Wally Hamed



JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
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E-mail: holtvi@aol.com

May 7, 2013

Nizar A. Dewood, Esq.
2006 Eastern Suburb, Ste. 101
Christiansted, VI 00820

RE: Suit filed against WADDA CHARRIEZ, SX-13-CV-152

Dear Attorney DeWood:

I am writing you regarding the lawsuit you filed against Wadda Charriez on May 3rd. As you know, Ms. Charriez was specifically identified by Judge Brady as being an employee of Plaza Extra Supermarkets, at ¶ 40 of the opinion:

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, *Tr. 181:20-185:16, Jan. 25, 2013*. Charriez had a "very critical job" with Plaza Extra (*Tr 179:17-19, Jan. 25, 2013*), and the independent accountant retained by Yusuf agreed that she was "a very good worker" and that her work was "excellent." *Tr. 94:2-6, Jan. 31, 2013*. Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee's improper activity, Mafeed Hamed instructed Charriez to return to work the following day. *Tr. 179:4-24; 185:17-186:8, Jan. 25, 2013*. On Charriez' January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr. 186:9-187:1, Jan. 25, 2013*. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. *Tr. 93:5-94:15; 164:19- 165:18; 187:5-188:8, Jan. 25, 2013*. The incident that occurred on January 9, 2013, the same day that Plaintiffs Renewed Motion was filed, coupled with other evidence presented *demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. Tr. 141:25-142:18;143:1 7-146:19; 166:21-167:8, Jan 25, 2013.* (Emphasis added.)

In the Court's April 25th Order accompanying the memorandum opinion, he stated that:



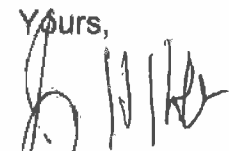
1. The operations of the three Plaza Extra Supermarket stores shall continue ***as they have throughout the years prior to this commencement of this litigation***, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), ***jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.*** (Emphasis added.)

The bringing of a legal action against a Plaza Extra Supermarket management employee without an agreement of the Hameds violates the Court's order. Indeed, the retention of your firm to represent Plaza Extra Supermarkets without the approval of the Hameds violates the "without unilateral action" provisions of the Court's Order.

I prefer to resolve this breach of the Court's Order without having to involve the Court. As such, please remedy this breach by promptly dismissing this case this week and sending me a stamped copy of the Notice of Dismissal. Otherwise you will leave my client with no alternative but to ask that you and your client be held in contempt of the Court's Order.

If you have any questions, please let me know as well.

Yours,



Joel H. Holt
JHH/jf

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED ,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and UNITED CORPORATION,)	INJUNCTIVE AND
)	DECLARATORY RELIEF
Defendants.)	
)	JURY TRIAL DEMANDED
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PLAINTIFF’S OPPOSITION TO DEFENDANTS’ “EMERGENCY” MOTION TO RECONSIDER THE PRELIMINARY BOND

The Defendants have filed three separate motions challenging the preliminary injunction issued in this case, one of which seeks reconsideration of the preliminary injunction order based solely on the bond required by this Court. This opposition memorandum addresses these “bond” issues. One preliminary comment is in order.

The defendants’ argument that this Court is required to hold a separate hearing on the bond is without any legal support at all, as no such requirement exists under Rule 65, nor has *any* court ever held that such a requirement exists.¹ Indeed, the defendants did not seek to sever the bond issue from the other preliminary injunction issues.

¹ None of the cases cited by the defendants for this proposition held that a separate hearing **is required** before setting the bond, even though some courts decided to hold a separate hearing on the bond issue. See, e.g., *Deborah Heart and Lung Center v. Children of the World Foundation, Ltd.*, 99 F. Supp. 2d 481, 495 (D.N.J. 2000); *EH Yacht, LLC v. Egg Harbor, LLC*, 84 F. Supp. 2d 556, 573 (D.N.J. 2000). Even the Seventh Circuit case the defendant relied upon so heavily, *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883 (7th Cir. 2000), does not say a separate hearing is required—it reversed the court below because it found the bond to be insufficient, not because a separate hearing was not held.

As the Third Circuit noted in *Hoxworth v. Blinder, Robinson & Co.*, 903 F. 2d 186 (3rd Cir. 1990), while Rule 65(c) requires a bond to be posted, "the amount of the bond is left to the discretion of the court." *Id.* at 210. The Court is free to consider the testimony and exhibits in setting that amount. Here there was significant testimony and evidence over two days of hearings as to the financials records and business operations of the Plaza Extra Supermarkets submitted by both parties.

After the hearing in this case, the Court then required the plaintiff to post a substantial bond before the preliminary injunction took effect pursuant to Rule 65(c). Thus, the setting of the bond in this case fully complied with the procedural requirements of Rule 65.

Thus, this Court can summarily reject the defendants' argument that a second "bond" hearing is required. Indeed, many of the cases cited by the defendants are easily distinguishable as they involve cases where no bond was set, so a remand was required to address the posting of a bond. *See, e.g., Howmedica Osteonics v. Zimmer, Inc.*, 461 Fed. Appx. 192, 198 (3d Cir. 2012)(court erred in not setting bond after converting TRO--where a bond had been set--to a preliminary injunction with no bond requirement); *Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010)(court erred in not requiring bond just because defendant did not ask for one); *Hoxworth v. Blinder, Robinson & Co.*, 903 F. 2d at 210 (3rd Cir. 1990)(court erred in not requiring a bond).

Once this point is clarified, the motion for reconsideration boils down to two remaining factual arguments regarding the bond. First, did this Court err in allowing a portion of the escrowed profits to be used as additional security for the bond? Second, should the Court consider the additional evidence submitted with the defendants' motion

in setting the bond? Each will be addressed separately after a brief review of the applicable standard for such motions.²

I. Applicable Procedural Standard For Ruling On This Motion

District Court Local Rule 7.3 (Motions for Reconsideration), applicable in this Court pursuant to Superior Court Rule 7, provides:

A party may file a motion asking the Court to reconsider its order or decision. . . .A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

Moreover, it is firmly established that "new evidence" must be something that was not available to the moving party prior to the filing of the motion for reconsideration. See, e.g., *Worldwide Flight Services v. Gov't of Virgin Islands*, 51 V.I. 105, 2009 WL 152316 at *3 (VI Supreme Ct. 2009)(motions for reconsideration are not for arguments that could have been raised before but which were not raised); *In re Hartlage*, 54 V.I. 449, 2010 WL 4961744 (VI Supreme Ct. 2010)(motions for reconsideration are not permitted to address evidence that was previously available). See also, *Doebler's Pennsylvania Hybrids, Inc. v. Doebler*, 2003 U.S. Dist. LEXIS 27098, at p. 4 (M.D. Pa. Oct. 15, 2003) (in a case cited by the defendants, the court held that only evidence that was not previously available could be considered in a motion for reconsideration).

II. The Escrowed Profits

In setting the bond, the Court stated in part:

² The defendants also argued that the bond should be placed in an interest bearing account. The funds in the Banco Popular Securities are already in such an account, but the plaintiff has no objection if the \$25,000 deposit with the Clerk of Court is removed to an interest bearing account. Thus, this point is not contested.

Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.

In this regard, it was established at the preliminary injunction hearing that all of the profits from the operations of the Plaza Extra Supermarkets since 2003 have been deposited into this Banco Popular account, where they remain. Those accounts now contain in excess of \$43,000,000. See Court's Finding ¶ 37 at p. 11. See also, 1/25 Tr, p 41:5-25; p 42:1-18; PEx 26.

The defendants assert that the Court erred in allowing this account to be used as part of the bond, arguing that these are United's funds so they cannot be used as part of the bond. Presumably, the defendants are relying upon the "clear error" provisions of Rule 7.3 in making this argument.

Incredibly, the defendants make this argument even though **they still admit** on page 3 of their companion *Motion to Reconsider and Modify Preliminary Injunction to Terminate Employees Mufeed Hamed, Waleed Hamed and Wadda Charriez* (filed at the same time as this "bond" motion) that they previously agreed in arguments to this Court **that Mohammad Hamed is entitled to 50% of the profits of the operations of the Plaza Extra Supermarkets.** It is hardly error for this Court to rely upon such judicial admissions of a party in making a finding that the plaintiff is entitled to 50% of these escrowed profits.

Indeed, as this Court noted in its findings, the defendants have *repeatedly* admitted that one-half of these profits belong to Hamed. See, e.g., Finding ¶ 15 at 5 (emphasis added):

Yusuf has admitted in this case that he and Hamed "entered into an oral joint venture agreement" in 1986 by which Hamed provided a "loan" of \$225,000 and a cash payment of \$175,000 in exchange for which "Hamed

[was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets" in addition to the "loan" repayment. **Yusuf states** that the parties' agreement provided for "a 50/50 split of the profits of the Plaza Extra Supermarket stores." *Pl. Ex. 2, p.3, 4.* Indeed, **Yusuf confirms** that "[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store **The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.**" *Pl. Ex. 3, p.11.*

Even United's President, Maher Yusuf, conceded this fact. 1/25 Tr at p 214:2-11.

Thus, the multiple admissions made under oath by Yusuf and United, as well as the judicial admissions included in pleadings signed by their lawyers, that the plaintiff is entitled to 50% of these profits is an established fact--it is an uncontested admission by both defendants.

As such, this Court certainly did not err in finding that 50% of these funds belonged to the plaintiff. Moreover, the use of the plaintiff's 50% interest of this \$43 million fund as part of the bond is certainly "erring on the high side" of what is needed to protect the defendants, as they have urged the Court to do, citing *Mead Johnson & Co. v. Abbott Labs., supra.*

Finally, it is certainly proper for the Court to use such funds as part of the bond. See, e.g., *Scarcelli v. Gleichman*, No. 2:12-cv-72-GZS, 2012 WL 1430555, at *5 (D. Me. Apr. 25, 2012) ("the Court concludes that it need not require Plaintiff to post any additional security. In light of the escrow established by this injunction, the Court is satisfied that the escrowed amounts would pay any costs and damages should it later be determined that Defendant Gleichman was wrongfully enjoined or restrained by this Order."). Indeed, the defendants have not challenged this holding, as they only argued that the escrowed funds were United's funds, which is untrue as noted since it is conceded that 50% of the funds belong to the plaintiff.

Thus, the finding that half of these escrowed profits (totaling in excess of \$43,000,000) could and does serve as half of the bond was not "clear error," so that this aspect of the defendants' motion should be denied.

III. The "New Evidence" Submitted By The Defendants

The defendants also argue that this Court should have considered hypothetical costs that the defendant may incur that were not previously submitted to the Court, including (1) salaries to three employees they want to fire, (2) rent allegedly due from 1994 through the current date, (3) legal fees that will be incurred in complying with the injunction and (4) the alleged loss of the company's "net equity."

Presumably the defendants are relying upon the "new evidence" section of Rule 7.3 in making this argument. However, these items are not "new" as this information was available at the time of the hearing. Thus, this Court can summarily reject these other items as not being proper matters to consider on a motion for reconsideration.

Moreover, none of these other items would have justified any increase in the bond even if they had been timely raised for the following reasons:

1. **Rent**-The defendants claim there is rent due United Corporation by Plaza Extra for the Sion Farm location. However, any rent allegedly owed United Corporation by Plaza Extra for the Sion Farm supermarket is not an asset of the partnership, so it is not a "cost" that is at risk of being lost by the partnership due to the preliminary injunction. Indeed, the preliminary injunction does not prohibit United Corporation from pursuing this debt.³

³ If there is any question about whether United is prohibited from pursuing such a claim now, it can be clarified by stipulation, just as the matter of the shopping center bank account was clarified by mutual action. See **Exhibit 1**. There are also multiple

2. **Net Equity**-While John Gaffney states that United has a "net equity" of \$68,000,000, no one explains how this amount, which is nothing more than an accounting figure, will be "lost" to United if the preliminary injunction is found to have been entered improperly. Of course, if the injunction is found to have been entered improperly, **this accounting figure will be the unchanged**, which is clearly why even Mr. Gaffney did not suggest otherwise. In short, this is a "lawyer created" claim, created to try to inflate the bond requirement in this case, which has no factual basis or legal support.
3. **Legal Fees**-While the defendants assert that legal fees between \$255,000 and \$425,000 will have to be incurred in dealing with the criminal case and the 17 pending personal injury lawsuits against Plaza Extra, those costs outlined in the declaration of Nizar DeWood are nothing but speculation.⁴ Indeed, no estimate of the time needed or the hourly fees is included in his declaration, so it is impossible to verify how such calculations were made. However, they are clearly inflated. For example, DeWood asserts that there will be a cost to obtain Hamed's consent to continue each personal injury lawsuit with current counsel in place, but those letters were sent by Hamed before this motion was even filed (at

problems with this rent claim, including a statute of limitations defense to amounts more than six years old, as well as a dispute as to the amount of the current rent due. See **Exhibit 2**. Indeed, the declaration by Mr. Gaffney as to amounts allegedly due before he was hired in September of 2012 (1/31 Tr at p 68) are beyond his personal knowledge, so his declaration should be stricken as to this point. However, these issues need not be addressed since this claim for rent is not relevant to the bond issue.

⁴ It is the defendant's burden to prove the amount needed for a bond, which cannot be based on counsel's speculation. See, *AB Electrolux v. Bermil Indus. Corp.*, 481 F. Supp. 2d 325, 336-37 (S.D.N.Y. 2007) (The defendant has burden as to demonstrating a rational basis for the amount required for a bond and it **cannot be speculative**).

no cost to Plaza Extra). **See Group Exhibit 3.** Likewise, the preparation of any revisions of counsel's engagement and an alleged indemnification agreement will be the same for each case, so this would just be a one-time charge, not an expense that will re-occur in each case. In short, these estimated figures have no reasonable basis for the Court to realistically evaluate in setting the bond. Moreover, the bond as set includes the plaintiff' 50% interest in the escrowed profits in excess of \$43,000,000, so even if this cost had been properly calculated, it is covered by this bond.

4. **Employee Wages-**As for the claim that the bond needs to be increased to address the alleged need to fire three employees, that argument likewise has no merit. First, as noted in the opposition to the companion motion addressing this issue, which is incorporated herein by reference, there is no merit to any such firings. Second, even if these employees were discharged, the partnership would still have to hire individuals to work these three key positions, so there is no "cost" that needs to be protected by the issuance of the preliminary injunction. Finally, the bond as set, which includes the plaintiff' 50% interest in the escrowed profits in excess of \$43,000,000, certainly covers this potential cost.

Once these alleged "costs" are analyzed, it is clear they are nothing more than defense counsel crying "wolf" to try to get an unwarranted increase in the size of the bond. Thus, even if these figures had been timely raised, they would not have supported an increase in the bond as set.

In summary, once analyzed, the "evidence" submitted in support of the need for an increased bond must fail. It is untimely and, even if it had been timely raised, it is unsupported by any evidence that would warrant an increase in the bond. **Indeed, if**


anything, the fact the defendants cannot come up with anything more than what they have now submitted to the Court demonstrates (1) that the bond as set by the Court is certainly reasonable and (2) if anything, the Court has erred on the "high side" of the bond needed to protect the defendants.

IV. Conclusion

This Court held a two-day hearing on the preliminary injunction. It then requested findings of fact and conclusions of law to be submitted. The defendants did not seek to sever the bond issue. Instead, their litigation strategy was to proceed as if they would prevail on the merits and ignore this issue. As such, they cannot now argue that they lacked an opportunity to address the bond issue.

In any event, for the reasons set forth herein, it is respectfully submitted that the Court did not err in setting the bond, so that the motion to reconsider the bond should be denied, except that the plaintiff has no objection to the bond being placed in an interest bearing account.

Dated: May 16, 2013



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

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820


CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May 2013, I served a copy of the foregoing Reply by hand on:

Nizar A. DeWood
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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



Joel H. Holt, Esq.

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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
)
) Plaintiff,)
)
) v.)
)
) FATHI YUSUF and UNITED CORPORATON,)
)
) Defendants,)
)
)

CIVIL NO. SX-12-CV-370
ACTION FOR DAMAGES;
JURY TRIAL DEMANDED

ORDER

THIS MATTER is before the Court on Defendant's Motion to Clarify the Court's Preliminary Injunction Order entered on April 25, 2013. Defendant's Motion is unopposed by Plaintiff; moreover, the parties have stipulated to the same. Thus, being fully advised in the premises it is specifically

ORDERED that Defendants' Motion is GRANTED.

ORDERED that Defendant United's Tenant Account No. 9xxx1923 in NOT subject to this Court's Preliminary Injunction Order, entered on April 25, 2013.

ORDERED that no signature shall be required from Plaintiff Hamed (or his authorized agent) for disbursement of any funds from Defendant United's Tenant Account No. 9xxx1923, only.

ORDERED that this Order be served on all parties FORTHWITH, and the Bank of Nova Scotia.

Dated: *May 7, 2013*

ATTEST: VENETIA H. VELASQUEZ
Clerk of the Court
By: *[Signature]*
Chief Deputy Clerk
5/8/13

[Signature]
Judge of the Superior Court

EXHIBIT
1

CERTIFIED TO BE A TRUE COPY
This *8th* day of *May* 20 *13*
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By *[Signature]* Court Clerk

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com


May 11, 2012

Fathi Yusuf
United Corporation
4C & 4D Sion Farm
St. Croix, USVI 00821

Dear Mr. Yusuf:

Wally Hamed received the Statement of Rent allegedly due for Plaza Extra dated May 4, 2012, signed by Najeh Yusuf on your behalf, a copy of which is attached. He has requested that I respond to it on behalf of his family. Mr. Hamed finds it difficult to believe that you think the store has agreed to pay such rent, as it has not. Indeed, it would be a dereliction of the manager's interest to ever agree to such rent. Your efforts to act unilaterally are not in the interest of the business or its owners, much less its creditors, customers and the community it serves. Such actions will not be recognized as valid. Please have your lawyer contact me if you have any questions.

Cordially,


Joel H. Holt
JH/jf

cc: Nizar Dewood



UNITED CORPORATION
4C & 4D Sion Farm
St Croix, USVI 00821
Phone (340) 778-6240

May 4, 2012

Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of May 1, 2012

Rent due for Plaza Extra – East, January 1, 2012 through April 1, 2012	Balance Due	\$850,000.00
ADD: 1% interest on outstanding Balance		<u>\$ 8,500.00</u>
	Amount Due	\$858,500.00
May 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due May 1, 2012	<u>\$1,108,500.00</u>

Please forward a check immediately.

Sincerely,



Najeh Yusuf for Fathi Yusuf

CC: Wally Hamed

PLAZA EXTRA

PHONE: 809-778-6240
FAX: 809-778-1200

P.O. BOX 768, CHRISTIANSTED
ST. CROIX, U.S. VIRGIN ISLANDS 00821

Carl A. Beckstedt, III, Esq.
Beckstedt & Associates
5025 Anchor Way, Suite 2
Christiansted, VI 00820

May 8, 2013

Re: Plaza Extra Litigation

Sent via Email: carl@beckstedtlaw.com

Dear Carl:

To follow up on the April 25, 2013 memorandum opinion and order entered by Judge Brady that was sent to you last week, this letter will confirm that the Hamed interests in Plaza Extra want you to continue as counsel in all litigation for the Plaza Extra Supermarkets that you are currently handling. Please keep me informed of all developments as you do in the normal course of business regarding these cases.

I want to assure you that any bills you present for such work will be approved by the Hameds promptly so payment can be made. Please note that if you are doing work for United Corporation or any member of the Yusuf family, you need to bill that separately to them. The Hamed make no claim as to corporate operation of the shopping plaza or the rentals therefrom. If you feel that Plaza Extra Supermarket should pay for any work for United or any member of the Yusuf family because it is arguably related to the supermarket business, just let me know and I will review it (and approve it if correct).

Please let me know if you have any questions. If there are any outstanding bills owed to you at the current time, please let me know and I will make sure they are promptly processed.

Yours,



Wally Hamed



From: Carl Hartmann <carl@carlhartmann.com>
To: Joseph DiRuzzo <JDiRuzzo@fuerstlaw.com>; dewoodlaw <dewoodlaw@gmail.com>
Cc: Joel Holt <holtvi@aol.com>; Kim Japinga <kim@japinga.com>
Subject: Letter to Attorney Dema and Attorney Beckstedt
Date: Wed, May 8, 2013 7:23 pm
Attachments: image.pdf (250K)

Attorney DiRuzzo and Attorney DeWood:

Appended is a letter from Willie Hamed to Attorney Dema and Attorney Beckstedt regarding ongoing legal matters.

No response has been received yet.

Please contact Joel Holt if you have any questions or we can be of further assistance.

Thank you,

Carl Hartmann

From: Carl Hartmann [mailto:carl@carlhartmann.com]
Sent: Wednesday, May 08, 2013 3:19 PM
To: 'Joseph DiRuzzo'; 'dewoodlaw@gmail.com'
Cc: 'Joel Holt'; 'Kim Japinga'
Subject: Letter to Attorney Beckstedt and his response

Attorney DiRuzzo and Attorney DeWood:

Appended are two letters. The first is from Wally Hamed (as his father's designee) to Attorney Beckstedt regarding ongoing legal matters.

The second is the response.

A similar letter is being sent by Willie Hamed – to include Attorney Dema – which I will provide as soon as we have a response as well.

As was the case with the stipulation regarding the tenant account, we are trying to cooperate in moving matters along.



PLAZA EXTRA

U. S. VIRGIN ISLANDS

PHONE: 340-775-5646 FAX 340-775-5766

John K. Dema, Esq.
LAW OFFICES OF JOHN K. DEMA, P.C.
1236 Strand Street, Suite 103
Christiansted, VI 00820-5008

Carl A. Beckstedt, III, Esq.
Beckstedt & Associates
5025 Anchor Way, Suite 2
Christiansted, VI 00820

Re: Plaza Extra St. Thomas/Tutu Park litigation

Sent via email: jdema@ljkd.com, carl@beckstedtlaw.com

Dear Counsel:

To follow up on the memorandum opinion and order entered by Judge Brady that was sent to you last week, this letter will confirm that the Hamed interests in Plaza Extra want you to continue as counsel in all litigation for the Plaza Extra Supermarkets that you are currently handling. Please keep me informed of all developments as you do in the normal course of business regarding these cases.

I want to assure you that any bills you present for such work will be approved promptly so payment can be made. If you are doing work for any member of the Yusuf family, you need to bill that separately to them. If you feel that Plaza Extra Supermarket should pay for any work for any member of the Yusuf family because it is related to the supermarket business, just let me know and I will review it (and approve it if correct).

Please let me know if you have any questions. If there are any outstanding bills owed to you at the current time, please let me know and I will make sure they are promptly processed.

Yours,



Willie Hamed

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF AND UNITED CORPORATION	)	ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF JURY TRIAL DEMANDED
)	
Defendant.)	
)	

**OPPOSITION TO MOTION TO RECONSIDER AND MODIFY
PRELIMINARY INJUNCTION TO TERMINATE EMPLOYEES
MUFEED HAMED, WALEED HAMED AND WADDA CHARRIEZ.**

On May 9, 2013, defendants filed three motions, including a motion to reconsider and to modify the preliminary injunction to terminate Mufeed Hamed, Waleed Hamed, and Wadda Charriez. This memorandum addresses that motion for reconsideration or to modify this Court's Order.

While defendants' motion discusses multiple issues, it limits the relief sought to the request to modify the order entered in order to terminate these three employees for "employee misconduct," so this opposition memorandum is limited to that issue. However, one other matter needs to be addressed in light of the defendants' arguments regarding the alleged dissolution of the partnership.

The plaintiff will first discuss the applicable standard for addressing such motions, before addressing these issues.

I. Applicable Procedural Standard For Addressing This Motion

Regarding Motions For Reconsideration, District Court Local Rule 7.3, applicable in this Court pursuant to Superior Court Rule 7, provides:

Opposition to Motion for Reconsideration Re Termination of Employees

Page 2

A party may file a motion asking the Court to reconsider its order or decision. . . .A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

Moreover, “new evidence” must be based on something that was not available prior to the filing of the motion for reconsideration. *See, e.g., Worldwide Flight Services v. Government of Virgin Islands*, 51 V.I. 105, 2009 WL 152316 at *3 (VI Supreme Ct. 2009) (motions for reconsideration are not for arguments that could have been raised before but which were not raised); *In re Hartlage*, 54 V.I. 449, 2010 WL 4961744 (VI Supreme Ct. 2010) (motions for reconsideration are not permitted to address evidence that was previously available).

Regarding the Motion to Modify an Injunction, as noted by the case cited by defendants, *Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000), the Third Circuit has adopted the following standard for granting such motions:¹

In the Third Circuit, however, “modification of a[] [preliminary] injunction is proper only when there has been a change of circumstances between entry of the injunction and the filing of the motion that would render the continuance of the injunction in its original form inequitable.” *Favia v. Indiana Univ.* 7 F.3d 332 (3d Cir.1993); see also *Township of Franklin Sewerage Auth. v. Middlesex County Utils. Auth.*, 787 F.2d 117, 121 (3d Cir.1986) (holding that “[t]he standard that the district court must apply when considering a motion to dissolve an injunction is whether the movant has made a showing that changed circumstances warrant the discontinuation of the order”). *Id.* at 550.

With these standards in mind, the plaintiff will now address the defendants’ arguments.

¹ While the Third Circuit no longer hears appeals from the local court system, absent a case on point from the VI Supreme Court, it can be presumed that local courts will still be guided by its decisions, particularly since the VI District Court is still bound by such holdings.

II. Dissolution of the Partnership

On April 25, 2013, the Court entered a preliminary injunction regarding a partnership formed in 1986, finding *inter alia* that a proposed notice of dissolution was given on February 12, 2012. (Memorandum ¶ 30 at p. 9.) The defendants argue that this finding somehow prohibits this Court from issuing an order dealing with the on-going business since it is now allegedly dissolved, citing *Browne v Ritchie*, 559 N.E. 2d 808 (Ill. App. 1 Dist. 1990). Presumably the defendants are relying upon provisions of Rule 7.3 in making this argument.

At the outset, the defendants misstate what the Court found in ¶ 30:

30. Thereafter, discussions commenced initiated by Yusuf's counsel regarding the "Dissolution of Partnership." Pl. Ex. 10, 11, 12. On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. Pl. Ex. 12 (footnote omitted). Settlement discussions followed those communications but have not to date resulted in an agreement. Tr. 58: 15-20, Jan. 25, 2013.

Thus, the Court only found that there was a "proposed" notice of dissolution, followed by unsuccessful negotiations to reach an agreement as to how the partnership should be dissolved.² Indeed the Court heard testimony at length about the continued, current operations of the three partnership assets—the three supermarkets—so dissolution of the businesses has not yet even begun to occur.

² The exhibits referenced by the Court in ¶ 30 (Exhibits 10, 11 and 12) do not state "this partnership is dissolved." For example, Exhibit 11 states Yusuf's "desire" to terminate the partnership, followed by an analysis of what "will" need to be done to reach a "well-executed agreement" to effectuate such a termination. Similarly, Exhibit 12 uses the word "proposed" in outlining the partnership dissolution.

Thus, the *Browne* decision cited by the defendants is easily distinguishable, as the withdrawing partner had given notice that he was in fact terminating his business and dissolving the partnership. When his partner sued him to enjoin him from doing so, the Court held that a partner cannot be forced to continue the partnership since a partnership is not a contract that requires a partner to continue against his wishes. *Browne, supra* at 141-142.

In this case, Yusuf did not give notice that he intended to immediately cease and desist as to all operations. To the contrary, the parties then began to negotiate while continuing to operate the business which is the normal process set forth in the UPA.

More importantly, regardless of whether a dissolution notice had been given, a partnership that is "winding up" pursuant to Chapter VIII of the Uniform Partnership Act (UPA), codified at 26 V.I.C. §§ 171-177, can clearly still seek court oversight regarding this process pursuant to 26 V.I.C. §173(a).³ Thus, even if Yusuf had formally given notice of dissolving the partnership, the plaintiff could still seek the judicial relief under the UPA, as codified in the Virgin Islands, which contains multiple remedies that can be sought from the Court.⁴

Thus, the defendants' assertion that this Court could no longer issue orders about the operation of the partnership is without merit as (1) no dissolution notice was

³ It would be an absurd result if a party who is violating the partnership rights of his partner could avoid judicial scrutiny simply by saying "I dissolve this partnership."

⁴ In fact, the plaintiff has asked that the Court find that he is entitled to "buy out Yusuf" and operate the businesses without him pursuant to 26 V.I.C § 121(5) and §§ 121-123 as part of the relief sought in the complaint.

given (only a “proposed” notice was sent) and (2) even if a notice had been given, a court can become involved in the winding up of a partnership if needed.

III. “Employee Misconduct”

The request to modify or reconsider the injunction to now allow the defendants to terminate two members to the Hamed family and a key accounting employee, whose value was recognized by this Court,⁵ appears to be purely vindictive in nature. In any event, the relief sought has no merit under a motion for reconsideration or a motion to modify this Court’s Order.

A. Motion To Modify To Allow Termination

The request to modify the preliminary injunction to allow such action fails to meet the required standard for granting such motions, which requires a showing of “a change of circumstances between entry of the injunction and the filing of the motion that would render the continuance of the injunction in its original form inequitable.” *See Tehan, supra* (citing *Favia v. Indiana Univ.*, 7 F.3d 332 (3d Cir.1993)).

⁵ As this Court stated in part in Finding ¶ 40 at p. 11-12 (emphasis added):

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, *Tr. 181:20-185:16, Jan. 25, 2013*. Charriez had a "very critical job" with Plaza Extra (*Tr 179:17-19, Jan. 25, 2013*), and the independent accountant retained by Yusuf agreed that she was "a very good worker" and that her work was "excellent." *Tr. 94:2-6, Jan. 31, 2013*. . . .The incident that occurred on January 9, 2013, the same day that Plaintiff’s Renewed Motion was filed, coupled with other evidence presented *demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. Tr. 141:25-142:18; 143:1 7-146:19; 166:21-167:8, Jan 25, 2013*.

In this regard, there has been no change in the circumstances regarding Wadda Charriez, as the alleged basis for terminating her is the same evidence already presented to this Court. Rather than re-argue “old facts,” the defendants have to show that Ms. Charriez has done something “new” warranting modification of the preliminary injunction to allow the defendants to fire her without consulting the Hameds.

Similarly, the request to terminate Waleed Hamed for alleged “**employee misconduct**” is based on a lawsuit filed against Waleed “Wally” Hamed (attached as Exhibit D the defendants’ motion) on January 6, 2013, well before the hearings in late January.⁶ Again, that evidence that was also available to the defendants prior to this Court’s order, so it is not “new” evidence since the entry of the injunction. Thus, this evidence is not a proper basis for seeking modification of this Court’s order.

The derivative lawsuit filed by Yusef Yusef on behalf of Plessen Enterprises, Inc., against Mufeed “Mafi” Hamed and Waleed “Wally” Hamed (attached as Exhibit A to the defendants’ motion) is also not a change of circumstances since the preliminary injunction was issued. Equally important, that lawsuit involves another business that has nothing to do with the Plaza Extra Supermarkets. Thus, **those allegations have nothing to do with “employee misconduct”** which further demonstrates that the relief now sought is simply vindictive in nature.

In summary, none of the proffered reasons for seeking a modification of the preliminary injunction meets the required standard for granting such motions, as none of

⁶ As noted in the defendants’ motion, there is a pending motion to dismiss this case due to the statute of limitations defense, as the alleged misconduct occurred **in the 1990’s**.

the events relied upon in seeking the relief in question occurred after the issuance of the preliminary injunction order.⁷

B. Motion To Reconsider To Allow Termination

Recognizing the weakness of its motion to modify the preliminary injunction, the defendants then ask this Court to reconsider its Order to allow Fahti Yusuf to terminate anyone he wants with or without cause. Presumably the defendants are relying upon the “clear error” provisions of Rule 7.3 in making this argument.

In making this argument, the defendants attempt to narrowly construe Mohammad Hamed’s role in the partnership, suggesting his interest as a partner are no longer active. However, as this Court noted in Finding ¶ 31 at p. 9:

31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr.* 45:24-48:2; 172:6-173:8; 202:18-25, Jan. 25, 2013; *Pl. Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh .6, ¶4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr.* 31:6-35:11, Jan. 25, 2013.

One of the exhibits the court relied upon in making this finding was Exhibit 6 to Yusuf’s 2002 deposition, where he stated under oath in part as follows:

4. Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage his interests for the family.

Thus, clearly Yusuf acquiesced in his partner’s son performing in his father’s stead and representing his father’s interest in the partnership, which he has now done for more than 15 years -- just as his own sons now do much of what he once did.

⁷ None of this evidence is “new” either so these arguments fail under Rule 7.3 as well.

The Court clearly recognized this point, stating in part in Conclusion ¶ 14 at p. 18 as follows:

14. . . . By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

Indeed, every Hamed or Yusuf family member who testified at the hearing acknowledged that this management arrangement had been in place for years. Moreover, Fathi Yusuf never testified to the contrary, nor has he submitted any affidavits that contradict the Court's findings. To the contrary, his sworn statements made more than a decade ago in the 2000 litigation in St. Thomas demonstrate that the stores have operated this way for a long, long time.

Thus, once the testimony of Mohammad Hamed quoted by the defendants is put into its historical context, as the Court did, there is no "clear error" in the Court's findings, as suggested by the defendants. Indeed, this Court's order was amply supported by the evidence of the management in place before Yusuf began to unilaterally remove funds and take other actions inconsistent with the joint management of the partnership.

Indeed, the Court found in Conclusion ¶ 21 at p. 20 that a preliminary injunction was warranted in part because:

21. The record reflects that Yusuf has arbitrarily addressed employee issues, including termination of a long-term high level employee and has threatened to close the stores. (See, Findings of Fact, ¶40). Evidence exists in the record to the effect that co-managers in Plaza Extra East no longer speak with each other (*Tr. 166:21-167:8, Jan. 25, 2013*), that employees are fearful for their jobs (*Tr. 158:18-159:12, Jan. 25, 2013*),

and that the tensions between Yusuf and the Hamed family have created a "hard situation" for employees (*Tr. 187:5-188:8*). Plaintiff alleges that such circumstances that flow directly from his deprivation of equal participation in management and control of the supermarkets reflect his loss of control of the reputation and goodwill of the business which constitute irreparable injury, not compensable by an award of money damages. *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371,378 (3d Cir. 1992).

The desire to fire two members of the Hamed managers because of (1) an unrelated business transaction and (2) conduct that allegedly occurred in the 1990's is precisely the type of arbitrary conduct that warrants the relief entered, as such protection is clearly needed in this case.

In summary, the request to reconsider this Court's Order so as to allow Fathi Yusuf to terminate employees with or without cause is without merit under the applicable Rule 7.3 standard.

IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that the motion to reconsider or modify the preliminary injunction so as to allow the defendants to discharge Mufeed Hamed, Waleed Hamed and Wadda Charriez be denied.

Dated: May 16, 2013



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2013, I caused a true and exact copy of the foregoing to be served by mail and email to:

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF AND UNITED CORP.,	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendant.	)	JURY TRIAL DEMANDED
)	

REPLY TO INTERVENOR'S REQUEST FOR A RULING AND STAY

The plaintiff, Mohammad Hamed, has already filed an opposition to this same motion to intervene. The Intervenor's request for an expedited ruling on the motion to intervene contains the same (erroneous) analysis and argument as raised by the defendants in their three post-hearing motions, demonstrating that the Intervenor's interests are already adequately represented. That said, plaintiff has no objection to this motion being addressed at the Court's convenience.

As for Intervenor's motion to stay, the plaintiff relies upon its opposition to the defendants' motion to stay filed at the same time as this response, which is incorporated herein by reference, so that that argument need not be repeated here.

For the reasons previously asserted by the plaintiff, it is respectfully submitted that the motion to intervene be denied as well as the motion to stay.

Dated: May 16, 2013



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