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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
| vs.  **FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*.  vs.  **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,*  vs. | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­  **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*    vs.    **FATHI YUSUF**, *Defendant.* | Consolidated with  **Case No.: SX-2014-CV-278** |
| *­­­­­*­­  **FATHI YUSUF**, *Plaintiff*,  vs.  **MOHAMMAD A. HAMED TRUST***, et al,*  *Defendants.* | Consolidated with  **Case No.: ST-17-CV-384** |
| *­­­­­*­­  **KAC357 Inc.**, *Plaintiff*,  vs.  **HAMED/YUSUF PARTNERSHIP,**  *Defendant.* | Consolidated with  **Case No.: ST-18-CV-219** |
|  |  |

**HAMED STATEMENT OF FACTS AS TO HAMED REVISED CLAIMS H-16—NEJEH YUSUF’S USE OF PARTNERSHIP RESOURCES FOR NON-PARTNERSHIP BUSINESSES AND H-34—RENTS COLLECTED, BUT NOT DEPOSITED IN PARTNERSHIP ACCOUNTS**

**STATEMENT OF FACTS**

1. On September 17, 2012, this action was filed because of: (1) Yusuf’s denial of all of Hamed’s partnership rights in the Plaza Extra Supermarket Partnership (a/k/a Hamed/Yusuf Partnership), and (2) Yusuf’s unilateral taking of $2.7 million from the Partnership for other Yusuf business ventures. (**Exhibit 1**)
2. On October 4, 2012, Yusuf removed the action to the Federal District Court. (**Exhibit 2**)
3. On November 16, 2012, the District Court remanded this action to this Court, stating, at 11, “Defendants have failed to establish that removal to the District Court of this partnership dispute between Virgin Islands residents is proper.” (**Exhibit 3**)
4. In late 2012, Nejeh Yusuf entered into a business arrangement with the Mansour brothers on St. Thomas, VI. Nejeh Yusuf testified in his deposition on January 22, 2019 that he was engaged in the following businesses with the Mansour brothers: Wala ice plants, Wala paintball, Sprint stores, Western Union, Wireless Tech, a restaurant, a Hookah bar and a kiosk in the mall.

Q. (Mr. Hartmann) Who's Mr. Mansour?

A. [NEJEH YUSUF] He’s one of three brothers that I had some

business relations with before.

Q. And could you describe those business relations?

A. We opened up a few stores in St. Thomas.

Q. And what stores were those?

A. We did Wala ice plants. Wala paintball. Some

Sprint stores. A store in the mall. We did Western Union,

and I joined them with a restaurant, a hookah bar.

\* \* \* \*

1. A kiosk in the mall.

Q.. . . .And approximately what time periods were

you in each of those businesses with him?

1. I think it started towards the end of 2012, maybe.

I believe that’s when I have a document signed, 2012.

Q. Okay. And what form were those businesses? Were

they partnerships or corporations or LLCs?

A. I believe they were LLCs --

\* \* \* \*

A. -- mostly in their name. All of them in their

names except the Sprint stores.

\* \* \* \*

A. Either myself or the Wireless Tech store in the

mall, the electronic store in the mall.

Q.. . . .Which you owned with the Mansours?

A. I was -- I had an agreement with them. (**Exhibit 4**, pp. 15;12-20, 25; 16:1-7, 9-10; 22:19-22)

1. On February 15, 2016, Hamed sent John Gaffney, Plaza Extra controller, a query and request for documentation for Claim H-16 (formerly Item No. 253):

Please describe how PE resources used for Nejeh Yusuf's personal businesses were accounted. Please provide the canceled checks, invoices and any other back up documentation for the use of PE resources, such as shipping containers, for Nejeh Yusuf's personal businesses. (**Exhibit 5**)

1. In that same February 15, 2016 document, Hamed sent John Gaffney a query and request for documentation for Claim H-34 (formerly Item No. 340):

How were the amounts collected, as described in exhibit 340-a—Rent collected by Nejeh from Triumphant Church, accounted for on the 2014 -2015 general ledgers? (**Exhibit 5**)

1. On May 17, 2016, John Gaffney sent a letter to Hamed’s attorney, Joel Holt, regarding the February 15, 2016 requests for information regarding the Plaza Extra accounting. Mr. Gaffney only responded to a few queries – H-16 and H-34 received no response. In his letter, Mr. Gaffney stated:

This letter accompanies my first submission of responses to document requests and questions from Vizcaino Zomerfeld (VZ) [Hamed’s accountant]. At this point I must point out the burdensome, time-consuming and expensive nature of these document requests. (**Exhibit 6**)

1. On January 22, 2019 in his deposition, Nejeh Yusuf testified that his business arrangements with the Mansour brothers was continuing as of the date of his deposition.

Q. [Mr. Hartmann] Right. And how long did it last?

A. [NEJEH YUSUF] I believe up to about 2016, or -- about 2015-16,

when I moved over here, I was still partners with him, but I

was not engaged in the -- in the business. I was not on

island.

Q. But the business was still operational?

A. Yeah, most of them were still operational.

Q. And you were still partners with him?

A. Yes.

Q. Are you still partners with him?

A. On paper, yes. I am not partners, but I have an

agreement with them on paper. (**Exhibit 4**, p. 17:11-22)

1. On January 22, 2019 in his deposition, Nejeh Yusuf testified that he used Plaza Extra resources to ship security cameras from Miami, Florida to St. Thomas, VI.

Q. [Mr. Hartmann]. . . .Let's take the box of cameras, since

everybody seems to agree that they exist.

The box of cameras were purchased by Plaza

Extra or by you, personally?

A. [NEJEH YUSUF] I believe they were purchased by either me or

Wireless Tech store in the mall from China.

Q. You or who?

A. Either myself or the Wireless Tech store in the

mall, the electronic store in the mall.

Q.. . . .Which you owned with the Mansours?

A. I was -- I had an agreement with them.

\* \* \* \*

A. They [cameras] got shipped to Plaza Extra, right. He paid

the freight from China to Miami.

Q. Who paid the freight?

A. Wireless Tech paid the freight from China to

Miami. And in return, I brought it from Miami down for a

lower price. So he -- in China, you have to buy quantity to

get the price.

\* \* \* \*

A. So I helped him by buying, because I needed

cameras.

Q. And when you said, "I had them shipped," you mean

you, Najeh, had them shipped, or, you, Plaza Extra, had them

shipped?

A. I can't remember, but I agreed with him that it

can come to Miami and I can ship it in my container.

\* \* \* \*

A. And when it gets there, I get the lower price. I

get the cost of the -- of the units.

Q. Okay. So now the cameras have been shipped from

Miami and they're sitting in the Plaza Extra store.

Who do they belong to?

A. They belong to myself and Wireless Tech.

Q. And who is Wireless Tech?

A. The two Mansour brothers.

\* \* \* \*

A. We bought the cameras. I can't remember how it's

situated, if it's in my name or Wireless Tech's name. To

think about it now, it could have even been in Plaza Extra's

name, because Willie was aware of it, that we were getting

cameras from him, and we were paying roughly 30 bucks or 40

bucks a camera, versus $169-$170 a camera.

So cameras came in. I made a deal with the

guy, you pay it to Miami. Miami comes down in my container

to Plaza St. Thomas. I take what's my share. I don't know

if -- how it was taken. If it was delivered. If he picked

it up. If it went -- if it went, you know, in the store,

landed like right at the receiving inside and we opened it

up, I opened it up and separated mine's, but the cameras

came in. I bought it for the purpose of Plaza Extra saving

funds, because we were buying it for over $150 a camera from

the local people. (**Exhibit 4**, pp. 22:12-22; 23:2-8,10-16,18-25; 27:2-17)

1. On January 22, 2019, Willie Hamed testified that Nejeh Yusuf took security cameras, a laptop, a computer, a monitor and a TV belonging to Plaza Extra-Tutu shortly before the sale of the Tutu store. Willie Hamed said that only Nejeh Yusuf could have taken the items because no one else in the store had access to the items other than Yusuf and himself. He also stated that Fadi Mansour related his conversation with Nejeh Yusuf where Yusuf told him that he had stolen the cameras. Finally, when these missing items were brought to Special Master Ross’s attention on the day of the Plaza Extra-Tutu store auction, he told Willie Hamed to put a claim in for the missing items.

A. [WILLIE HAMED] Well, we -- before the store was -- went up for

bid, Nejeh went and took a lot of equipment, a lot of items

that belonged to the store and sold them. . . .

He took everything out of his office that was

belonging to Plaza Extra Tutu, whether it's a computer,

whether it's the laptop, whether it's the monitor, whether

it's the TV, whether it's numerous things

\* \* \* \*

A. I know there's equipment that was taken out of the

store.

Q. [Ms. Perrell] What?

A. I can't recall in detail what it is. I know there

was cameras, like a box of surveillance cameras. DVRs.

\* \* \* \*

Q.. . . .Did you see those things being removed by

Nejeh?

A. No, but they were in his possession --

\* \* \* \*

A. -- at all times.

\* \* \* \*

A. Then when we were getting with our bidding

process, all of a sudden, they disappeared.

\* \* \* \*

Q. [Ms. Perrell] If you didn't see him take the, let's take the box

of cameras, how do you know it was him that took the box of

cameras?

A. Because Fadi confirmed it.

\* \* \* \*

A. Mansour confirmed it.

\* \* \* \*

Q. [Mr. Hartmann]. . . .If you didn't see, actually physically see

Nejeh take that stuff, how do you know it was him that took

it, as opposed to Bob Smith, the guy who works in the

bakery?

A. [WILLIE HAMED] Because Bob Smith does not have access.

\* \* \* \*

A. The only people who have access is myself and him.

Q.. . . .So what you're saying is, one day the stuff

was there, the next day the stuff was gone, and you inferred

from that, that Nejeh took it?

A. I actually mentioned it in front of Joel, my

brother, and Judge Ross, the day that we made the bid, and

in front of Yusuf, saying, Hey, some of the stuff was in his

office and it's now gone. That was Plaza Extra property.

\* \* \* \*

A.. . . .Then the judge stated, All

right. Just put in a claim for it. (**Exhibit 7**, pp. 60:9-11, 14-17; 65:5-9, 13-20; 79:2-9, 14-25; 80:1-5)

1. On January 22, 2019 in his deposition, Nejeh Yusuf testified that he took a pressure washer that belonged to Plaza Extra Tutu and did not return it to the store.

A.[NEJEH YUSUF]. . . .There was a -- a issue with a pressure washer

that was at my house that I borrowed before the -- the

split, and the manager called me, Johnny Gumbs, and says, We

want the pressure washer back. I said, It's at my house.

You want it, you can come get it. I'm not bringing it.

\* \* \* \*

Q.. . . .And where's the pressure washer now?

A. I think it's still there probably rotten.

Q. At your house?

A. Probably. (**Exhibit 4**, p. 30:1-4; 15-18)

1. On January 22, 2019 in his deposition, Nejeh Yusuf testified that the rents from the Triumphant Church and an auto body shop belonged to Plaza Extra, but his father, Fathi Yusuf, told him to stop depositing the rents into the Plaza Extra account towards the end of the Partnership. At that point, Nejeh Yusuf stated he simply kept the rent payments. He said prior to his father’s directive, the renters would come to the service desk at Plaza Extra to pay the rent, the service desk would call Nejeh to the desk, Nejeh would then write a receipt for the renter showing the rent was paid and then he would deposit the funds into the Plaza Extra account.

A.[Mr. Hartmann]. . . .Were the three businesses that you collected,

you and Willie also collected rents from on a monthly basis?

A. [NEJEH YUSUF] The rents wasn't coming in monthly.

Q. Well, did you collect the rents for them?

A. Yeah, we collected the rents from them.

Q. And what were the three businesses?

A. It was the -- well, it's mainly two businesses:

It was the church and the auto body shop.

\* \* \* \*

Q.. . . .So just tell me about how the collection of

the rents worked?

A. They would come into the service desk and they

would drop off the payment. And then I would, in turn, give

it to the girls upstairs to deposit in the account.

\* \* \* \*

Q. Okay. And did you ever -- any of the -- the money

that came in for rent, did it ever go through your hands or

did it always go through the desk?

A. They always called me. I handled it with the

folks. I wrote them a receipt from the store. And I had it

deposited in the accounts up until my dad told me stop

depositing those funds in the -- in the store's account.

Q. And when did he tell you that?

A. Towards the end of the partnership.

Q. Okay. And from that point on, where did the rents

go?

A. I just held onto it. It went -- either I held

onto it or it went into the -- I think I held onto it,

mainly. He said not to deposit into the account. . . .

(**Exhibit 4**, pp. 37:4-11; 18-22; 38:5-18)

1. Receipts left at the Plaza Extra-Tutu store showed that the Triumphant Church was paying rent of $300 per month. A document summarizing the payments receipt showed the last collection date for the rent was April 2015. (**Exhibit 8**)
2. On January 22, 2019, Waheed “Willie” Hamed testified that Nejeh Yusuf continued to collect rents from the Triumphant Church, the body shop and a plastics cistern business after the store was sold to the Hamed’s on May 1, 2015.

A. [WILLIE HAMED]. . . .there were three businesses there: The church, a body shop,

Cliff's Body Shop, and a guy that sells plastic containers

for like septic and cisterns. And they were all paying

rent. I've collected the rent twice and I gave it to Nejeh.

I wrote a receipt for that amount and I gave it to Nejeh.

\* \* \* \*

Q. [Ms. Perrell]. . . .Was there a point in time in which the

rents were no longer collected on behalf of the partnership?

A. They were still collected, even after -- after

we -- after we bought the sore, they came by and they were

saying, Hey, we're looking for Nejeh, we need to pay the

rent.

\* \* \* \*

Q.. . . .So there was, in your mind, never a point

in time in which the rents from these three entities should

not still be collected by the partnership?

A. They should still be collected by the partnership. (p. 70, lines 8-11) (**Exhibit 7**, 68:10-14, 69:20-25; 70:8-11)

**Dated:** February 25, 2019

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**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, Vl 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

**Joel H. Holt, Esq.**

*Counsel for Plaintiff*

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, Vl 00820

Email: holtvi@aol.com

Tele: (340) 773-8709 Fax: (340) 773-867

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of February, 2019, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master

% edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**Charlotte Perrell**

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00802

ghodges@dtflaw.com

**Mark W. Eckard**

Hamm, Eckard, LLP

5030 Anchor Way

Christiansted, VI 00820

mark@markeckard.com

**Jeffrey B. C. Moorhead**

CRT Brow Building

1132 King Street, Suite 3

Christiansted, VI 00820

jeffreymlaw@yahoo.com \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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