

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

UNITED CORPORATION,
Plaintiff,

v.

WADDA CHARRIEZ,

Defendant.

WADDA CHARRIEZ,
Counter-Claimant,

v.

UNITED CORPORATION,
Defendant.

WADDA CHARRIEZ,

Third-Party Plaintiff,

v.

FATHI YUSUF,

Third-Party Defendant.

Case No.:2013-CV- 152

**ACTION FOR DAMAGES
& RECOUPMENT**

JURY TRIAL DEMANDED

**DEFENDANT WADDA CHARRIEZ'S RESPONSE TO
UNITED'S MOTION TO JOIN YUSUF AS NECESSARY PARTY
PURSUANT TO RULE 19**

Defendant, Wadda Charriez ("Charriez"), hereby opposes the motion of Fathi Yusuf to be joined as a "necessary party" in this case for two reasons, each of which is sufficient by itself to warrant denying the motion.

First, Fathi Yusuf is **already a party in this case**, having been sued as a third party by Charriez on June 24, 2013. See **Exhibit 1**. Thus, if Yusuf has a claim against Charriez, he should have filed it as a counterclaim long ago. Indeed, Yusuf filed a motion to dismiss on August 20, 2013, seeking to be dismissed from this case. Thus, the real question is--why is Yusuf still moving to be dismissed if he now wants to be a

party? In any event, he is already a party and can still file a counterclaim (since he has not yet filed an answer), so adding him as a "necessary party" can be denied as moot.

Second, United Corporation claimed it was Charriez's employer. When it subsequently conceded that the Plaza East store where Charriez was working was actually owned by a partnership and not United, a motion to dismiss the complaint was filed in this case by Charriez on October 16, 2014. In short, if United does not own the store where Charriez is employed, it cannot be her employer. United never filed an opposition to this motion, so there is no reason it should not be granted now.

Indeed, United continues to file pleadings in this court confirming that the Plaza East store is not owned by United, but is owned by the partnership, as most recently noted in the eviction action it filed a month ago, seeking to evict the partnership from its shopping center. See **Exhibit 2**. Thus, Charriez's motion to dismiss the complaint should be granted as it is unopposed and cannot be opposed in good faith since United has now admitted in judicial filings in this Court that it does not own Plaza East where Charriez worked at all times relative to the allegations in the complaint.¹

Thus, aside from the fact that Yusuf is already a party in this case, there is no legal basis for keeping United in this case as the Plaintiff-employer, as it now has admitted in numerous court filings that it is not Charriez's employer. As such, the motion to add Yusuf can be denied for this reason as well, as United's complaint against Charriez should be dismissed based upon the unopposed pending motion to dismiss.

¹ Moreover, since the motion to dismiss was filed, Judge Brady has granted summary judgment on this issue, finding that the Plaza Extra stores are owned by a partnership, not United (See **Exhibit 3** attached) which further confirms why Charriez's motion to dismiss should be granted without further delay/

Dated: March 9, 2015



Joel H. Holt, Esq.
Counsel for Charriez
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340-773-8709
holtvi@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2015, I served a copy of the foregoing by hand on:

K. Glenda Cameron, Esq.
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

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

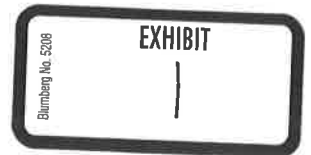


03/06/15 Superior Court of the Virgin Islands
 Civil Division PAGE:
 CIVIL ACTION DOCKET

UNITED CORPORATION CASE NO: SX-13-CV-0000152
 VS. FILING DATE: 05/03/13
 JUDGE: Hon. Robert A. Mo
 CHARRIEZ, WADDA

PARTY TYPE	LITIGANT	PARTY NAME
ATTORNEY FOR ANY OTH	P001	DEWOOD, NIZAR A.
PLAINTIFF	P001	UNITED CORPORATION
DEFENDANT	D001	CHARRIEZ, WADDA

DATE	FEE/P
02/24/15	
PLAINTIFF UNITED'S MOTION TO JOIN FATHI YUSUF AS NECESSARY PURSUANT TO RULE 19 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND ORDER SUBMITTED BY NIZAR DEWWOD, ESQ.	
01/28/15	
RECORD OF PROCEEDING COMPLETED BY CHERYL CLARKE	
01/20/15	
STATUS HEARING/CONFERENCE SCHEDULED 01/28/2015 09:00 AM	
01/20/15	
NOTICE OF ENTRY OF ORDER 01/14/2015 RYAN GREENE, ESQ. NIZAR A. DEWOOD, ESQ. GLENDA CAMERON, ESQ.	
01/20/15	
DIRECT JUDGE REASSIGNMENT FROM: HWLW TO: RAM	
01/14/15	
ORDER SCHEDULING STATUS CONFERENCE SIGNED BY JUDGE MOORE	
10/16/14	



DEFENDANT WADDA CHARRIEZ' MOTION TO STRIKE PURSUANT TO
SUBMITTED DBY RYAN GREEN, ESQ.

09/11/14

DEFENDANT WADDA CHARRIEZ' NOTICE OF ADDITIONAL PROCEDU
SUBMITTED BY RYAN GREENE, ESQ.

11/06/13

DEFENDANT WADDA CHARRIES' WITHDRAWAL OF CLAIM AS TO C
COUNTERCLAIM
SUBMITTED BY RYAN GREENE, ESQ.

11/06/13

DEFENDANT WADDA CHARRIEZ' MOTION FOR LEAVE TO FILE SEC
COUNTERCLAIM AS TO UNITED
SUBMITTED BY RYAN GREEN, ESQ.

09/20/13

DEFENDANT WADDA CHARRIEZ' REPLY AS TO HER MOTION PURSI
12(c)

□ Superior Court of the Virgin Islands

03/06/15 Civil Division

PAGE:

CIVIL ACTION DOCKET

SX-13-CV-0000152

DAMG

DATE

FEE/F

SUBMITTED BY RYAN GREENE, ESQ.

09/16/13

PLAINTIFF'S RESPONSE TO DEFENDANT WADDA CHARRIEZ' MOTI
THE MOTION TO DISMISS COUNTER-CLAIMS AND THIRD-PARTY (C
PURSUANT TO FED R. CIV.P. 12(b)(6)
SUBMITTED BY K. GLENDA CAMWERON, ESQ. & NIZAR DEWOOD, I

08/29/13

DEFENDANT WADDA CHARRIEZ' MOTION TO STRIKE PURSUANT TO
AND ORDER
SUBMITTED BY RYAN GREENE, ESQ.

08/29/13

DEFENDANT WADDA CHARRIEZ' REPLY TO PLAINTIFF'S 12(b)(C
DISMISS AND ORDER
SUBMITTED BY RYAN GREENE, ESQ.

08/29/13

DEFENDANT WADDA CHARRIEZ' FIRST AMENDED COUNTERCLAIM I
AND FIRST AMENDED THIRD PARTY COMPLAINT AS TO FATHI YU
SUBMITTED BY RYAN GREENE, ESQ.

08/21/13

MOTION FOR LEAVE NUNC PRO TUNC TO FILE BRIEF IN SUPPORT OF MOTION TO DISMISS IN EXCESS OF THE PAGE LIMIT AND ORDER SUBMITTED BY K. GLENDA CAMERON, ESQ. & NIZAR DEWOOD, I

08/20/13

MEMORANDUM OF DECISION RE: PLAINTIFF/COUNTER-DEFENDANT UNITED CORPORATION AND FATHI YUSUF'S MEMORANDUM OF LAW AND MOTION TO DISMISS THEIR MOTION TO DISMISS COUNTER-CLAIMS AND THIRD-PARTY COMPLAINT PURSUANT TO RULE 12(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE SUBMITTED BY G.K. CAMERON, ESQ.

08/20/13

UNITED CORPORATION AND FATHI YUSUF MOTION TO DISMISS THE COUNTER-CLAIM AND THIRD-PARTY COMPLAINT PURSUANT TO CIVIL RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM AND FOR JUDGMENT AS A MATTER OF LAW SUBMITTED BY K.G. CAMERON, ESQ.

07/18/13

RETURN OF SERVICE FOR SUMMONS ISSUED TO FATHI YUSUF AND

06/26/13

SUMMONS RECEIVED ISSUED TO FATHI YUSUF

06/24/13

ANSWER, COUNTERCLAIM AND THIRD PARTY COMPLAINT OF WADIA SUBMITTED BY RYAN GREENE, ESQ.

05/06/13

DOCKET LETTER PROCESSED

05/06/13

AS TO CHARRIEZ, WADDA

20 DAY SUMMONS ISSUED

05/06/13

75.00

FEE RECEIVED

RECEIPT # - 00081869

05/06/13

DIRECT JUDGE ASSIGNMENT Hon. Harold H.W. Willocks HWL Superior Court of the Virgin Islands

□

03/06/15

Civil Division

PAGE:

CIVIL ACTION DOCKET

SX-13-CV-0000152

DAMG

DATE

FEE/F

05/03/13

TRIAL BY JURY DEMANDED

05/03/13

CIVIL LITIGANT PERSONAL DATA FORM RECEIVED

05/03/13

FILING FEE ASSESSED

05/03/13

VERIFIED COMPLAINT RECEIVED

TOTAL NUMBER OF ENTRIES: 29

REQUESTED BY: REDOLE

***** END OF REPORT *****

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

UNITED CORPORATION,

Plaintiff,

vs.

**PLAZA EXTRA PARTNERSHIP and
MOHAMMAD HAMED,**

Defendants.

CIV. NO. SX-15-CV- 10

**ACTION FOR EVICTION AND
UNLAWFUL DETAINER**

15 JAN 22 19:06

COMPLAINT

COMES NOW, Plaintiff United Corporation (“United”), through its undersigned counsel, for its complaint alleges the following:

I. BACKGROUND

1. This is an action for eviction and unlawful detainer against defendants Plaza Extra Partnership d/b/a Plaza Extra Supermarkets (the “Partnership”) and Mohammad Hamed (“Hamed”). The Partnership, which is comprised of Hamed and Fathi Yusuf (“Yusuf”) as partners, is currently the subject of a pending action in the Superior Court captioned Hamed v. Yusuf, Civ. No. SX-12-CV-370, which involves the dissolution, liquidation, and winding up of the Partnership (the “Partnership Case”).

II. JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to V.I. Code Ann. tit. 4, §76(a).
3. Venue is proper in the District of St. Croix because the premises in question, approximately 70,000 square feet of retail space, is located at 4C & 4D Estate Sion Farm, St. Croix, Virgin Islands (the “Premises”).



III. THE PARTIES

4. United was incorporated in the Virgin Islands in 1979 and has continuously conducted business since that time. United has been the record owner of the premises for decades.

5. The Partnership began occupying the Premises in 1986 pursuant to an unwritten understanding with United that rent would be periodically paid by the Partnership based upon an agreed price per square foot occupied.

6. The rent that accrued from 1986 through December 31, 1993 was paid to United at the end of 1993 by way of a reconciliation of accounts between Hamed, Yusuf, and United.

7. For the rents that accrued between January 1, 1994 through May 4, 2004, Hamed now refuses to allow the Partnership to pay these rents, claiming inconsistently that the rents were in fact paid or that the obligation to pay such rent cannot be enforced based on the statute of limitations.

8. Using a percentage of sales formula that Hamed and Yusuf agreed would become effective on May 5, 2004, Yusuf calculated the amount of rent due for the period May 5, 2004 to December 31, 2011 to be \$5,408,806.74. Yusuf presented the rent bill to Hamed's son, Waleed, for that sum and period, and Waleed, on behalf of his father, agreed that it should be paid to United in the amount of \$5,408,806.74 by means of a Partnership check signed by Waleed Hamed and by Yusuf's son, and delivered to United.

9. For the period from January 1, 2012 to the present, Hamed refuses to allow the Partnership to pay any rent for the Partnership's occupancy of the Premises.

10. As this action only addresses United's entitlement to restitution of the Premises, the issue of whether and to what extent United may recover unpaid rent will be adjudicated in the Partnership Case.

11. On January 1, 2012, United served Hamed with written notice of the termination of any agreement for the Partnership to continue occupying the Premises unless the Partnership paid increased rents. Thereafter, Hamed neither paid the increased rent nor vacated the Premises.

12. Despite United's repeated demands for restitution of the Premises, Defendants continue to occupy the Premises without any occupancy agreement and without paying any rent.

WHEREFORE, United respectfully requests this Court to enter judgment in its favor against Defendants:

1. declaring that United is entitled to restitution of the Premises and ordering the immediate issuance of a writ of restitution in United's favor; and
2. awarding United its costs, attorneys' fees, and such further relief as is just and proper.

Date: January 22nd 2015

Respectfully Submitted,

DEWOOD LAW FIRM
Attorneys for Plaintiff

By:

Nizar A. DeWood

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

MOHAMMED HAMED by his authorized agent
WALEED HAMED,

Plaintiff/Counterclaim Defendant,

v.

FATHI YUSUF and UNITED CORPORATON,

Defendants/Counterclaimants

v.

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

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370
ACTION FOR DAMAGES, etc.

ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Partial Summary Judgment, filed November 12, 2012 in the District Court of the Virgin Islands, prior to remand to this Court; Defendants' Motion to Appoint a Master for Judicial Supervision of Partnership Winding Up, or in the alternative to Appoint Receiver to Wind Up Partnership ("Motion re Master"), filed April 7, 2014; Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership ("Plaintiff's Motion"), filed May 9, 2014; Defendants' Opposition, filed June 2, 2014; Plaintiff's Reply, filed June 10, 2014, and Plaintiff Mohammad Hamed's Notice of Additional Facts Regarding his Motion for Summary Judgment as to Partnership, filed September 11, 2014. This matter came on for a telephonic status conference on October 7, 2014, at which time the Court advised that based Defendants' agreement that the relationship between Plaintiff and Defendant



Yusuf constituted a partnership that it would enter summary judgment as to the existence of a partnership. As such, Plaintiff's Motion will be granted for the reasons that follow.

By Amended Complaint filed October 19, 2012, Plaintiff alleged that a partnership existed between Hamed and Yusuf pursuant to the Uniform Partnership Act adopted in the Virgin Islands, and brought this action pursuant to V.I. CODE ANN. tit. 26, § 75 seeking, among other things, entry of declaratory judgment recognizing the Hamed-Yusuf Partnership. In his Motion re Master, Defendant Yusuf conceded the existence of a partnership by operation of law between himself and Plaintiff Hamed, and requested that this Court dissolve said partnership. See Motion re Master, ¶7. In subsequent filings and in open court, Defendants have reiterated their concession as to the existence of the partnership. Accordingly, Plaintiff renewed his motion for partial summary judgment, seeking the Court's entry of judgment on Count One of Plaintiff's Amended Complaint declaring the existence of the Hamed-Yusuf Partnership.

Defendants object to Plaintiff's Motion on the following grounds: 1) Pursuant to LRCi 56.1, Plaintiff's Motion lacks a separate statement of material facts; 2) Plaintiff's Amended Complaint does not request declaratory relief based on the Uniform Partnership Act; and 3) there is no need to enter summary judgment as Defendant Yusuf already conceded the existence of a partnership. Opposition, at 2-4.

The Court is not persuaded by Defendants' arguments: First, Plaintiff's Motion before the Court is "renewed." His original Motion for Partial Summary Judgment, filed in the District Court, included an accompanying statement of undisputed material facts. As such, Plaintiff in compliance with LRCi 56.1. Second, Paragraphs 36 and 37 of Plaintiff's Amended Complaint specifically seeks declaratory relief as to the existence of a partnership pursuant to the Uniform

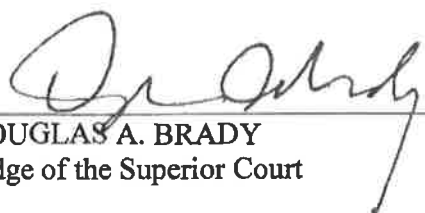
Partnership Act, as codified in the V.I. Code. Finally, contrary to Defendants' argument, the declaration by the Court of the legal relationship of the parties, disputed in the pleadings but undisputed in fact, brings clarity to the record and conforms the law of the case to the undisputed facts upon which the parties agree. The formal declaration of the existence of a partnership is a necessary prerequisite to the dissolution and winding-up of the partnership, the process upon which the parties have embarked. In light of the foregoing, it is hereby

ORDERED that Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership is GRANTED; and it is further

ORDERED that the Court finds and declares that a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities; and it is further

ORDERED that Plaintiff may properly maintain this action against Defendant Yusuf for legal and equitable relief to enforce his rights under the parties' partnership agreement and the Uniform Partnership Act.


Dated: *November 7, 2014*


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor

11/7/14