

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

**MOHAMMAD HAMED, by his  
authorized agent, WALEED HAMED,** )

**Plaintiff,** )

**v.** )

**FATHI YUSUF and  
UNITED CORPORATION,** )

**Defendants.** )

**CIV. No. 1:12-cv-99**

**Jury Trial Requested**

**MEMORANDUM IN SUPPORT OF PLAINTIFF HAMED'S MOTION FOR REMAND**

Plaintiff, Mohammad Hamed ("Hamed") hereby moves to remand this case to the Superior Court, as there is no jurisdictional basis for this Court to hear this case. Indeed, if there were, the plaintiff would have filed in this Court. However, as will be discussed herein, there is no legitimate basis for federal jurisdiction -- so this case should be remanded to the Superior Court.

**I. The Allegations In The Complaint**

The complaint is clear; this case is purely local in nature. First, the parties are all described as citizens of the Virgin Islands (and nowhere else). Thus, there is no claim for diversity jurisdiction.

Second, the complaint seeks relief solely under the Virgin Islands partnership law, codified in Title 26 of the Virgin Islands Code — it does not recite a federal cause of action in any count or seek any remedy based on a federal law.

Third, contrary to the defendants' novel suggestion, none of the parties are agents or officers of the federal government or are persons acting thereunder with regard to the partnership.

Fourth, no cause of action set forth in the complaint is based on any USVI or federal tax law. **Thus, on its face this action is purely local in nature.**

Having detailed what the complaint does *not* contain, it is appropriate to discuss the factual and legal issues raised that *are* raised in the complaint. (D.E. 1-3 at pp. 1-11) Those allegations are limited solely to the existence of a USVI partnership (and the parties' rights therein.) It is a partnership that has operated three supermarkets in the Virgin Islands since the mid-1980's known as "Plaza Extra". Although questions related to the existence of a partnership are issues of fact and not appropriate to this motion, contrary to the defendants' factual argument on the merits, the allegations in the Complaint are amply supported by attached documentation demonstrating that such a partnership exists. (D.E. 1-3 at pp. 13-41) These documents contain unambiguous, written admissions by the defendants and their agents demonstrating the existence of this partnership.

For example, correspondence sent earlier this year to Mohammad Hamed by Nizar DeWood, as counsel for defendant Fathi Yusuf, describe this business relationship as a partnership, providing its name, purpose and year of commencement. These **documents generated by Yusuf's lawyer** also describe the partnership assets in detail, listing the three supermarkets and expressly noting that the partners have shared the profits and losses of this partnership. He further notes that Mr. Yusuf was dissolving the partnership, with a draft partnership dissolution attached which he sought to impose regarding the distribution of the three supermarkets and the final accounting to be done to distribute the remaining cash assets. The document has a place for the

two partners, identified by name as Fathi Yusuf and Mohammad Hamed, to sign.<sup>1</sup> (D.E. 1-3 at pp. 13-25)<sup>2</sup> By way of another example, Mr. Yusuf has previously sworn under oath that Mr. Hamed is his partner -- giving a long, detailed recitation of the long history of how the partnership was formed. (DE 1-5 at pp. 20-33)<sup>3</sup>

In short, as alleged in the complaint and demonstrated through the attached documents, there is an established course of dealing in a partnership for longer than 30 years, with the actual division of profits from the three partnership stores always being equal between the two partners.<sup>4</sup> Thus, regardless of these cross-arguments of fact, the complaint sets forth an adequate factual basis for establishing a partnership, with a presumption in favor of the existence of such a partnership by operation of USVI law.

Turning to the face of the complaint, not only does virtually every single paragraph refer to the "partnership," the only statutes referenced are partnership statutes (under the UPA as codified in the Virgin Islands Code.) Indeed, Count I of the Complaint relies upon partnership as its sole basis of claim, alleging as follows (emphasis added):

25. The foregoing acts all violate the **partnership rights** of Hamed as well as the terms of the **partnership agreement** between Yusuf and Hamed.

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<sup>1</sup> Nizar Dewood is also counsel for both Yusuf and United in this action. (D.E. 2)

<sup>2</sup> Although they are also attached to the complaint, to assist the Court, copies of these documents are also highlighted and attached to this memorandum as Group Exhibit A.

<sup>3</sup> To assist the Court, a copy of these deposition excerpts have also been highlighted and attached as Exhibit B.

<sup>4</sup> The version of the Uniform Partnership Act (UPA) that was in effect in the USVI at the time of formation of the partnership stated that the sharing of profits creates a "prima facie" showing of the existence of a partnership. See 22 V.I.C. §22 (now superseded). The revised UPA, adopted in 1998 by the Virgin Islands, contains a similar provision but refers to it as a "presumption" -- although the drafting notes show no intent to change the effect, only to modernize the language. See 26 V.I.C. § 22(c)(3).

26. As such, pursuant to **26 V.I.C. § 75**, Hamed is entitled to legal and equitable relief as deemed appropriate to protect and preserve his **partnership rights**.

27. In this regard Hamed is entitled to declaratory relief as to his rights as well as injunctive relief to protect those rights, including the return of funds **to the partnership** improperly taken or spent by Yusuf to date in violation of the agreement between the parties.

28. Hamed is also entitled to compensatory damages for all financial losses inflicted by Yusuf **on the partnership and/or his partnership interest** as well as punitive damages against Yusuf for his willful and wanton misconduct.

Similarly, Count II relies solely on partnership law as its basis of claim, as follows (emphasis added):

30. The foregoing acts by Yusuf also constitute intentional misconduct, or reckless and grossly negligent conduct, which has adversely and **materially affected the partnership** between Hamed and Yusuf regarding the three Plaza supermarkets.

31. As such, Hamed is also entitled to a judicial determination under **26 V.I.C. § 121(5)** that it is not practicable to **continue the partnership** with Yusuf so that Yusuf's **partnership interests** should be disassociated from the business, allowing Hamed to continue the partnership business without him pursuant to the provisions of **26 V.I.C. §§ 122-123 and Subchapter VII of Title 26**.

As can be seen from the face of the complaint, none of the collateral issues raised in the Notice of Removal are raised either as claims or as requested relief. With this understanding of the complaint, it is now appropriate to address the arguments raised by the defendants in their removal notice.

## **II. The Defendants' Arguments Are Without Merit**

The defendants argue that this Court has jurisdiction over this case under several theories, but no such "federal law" claims exist in this case.

*A. No Federal Cause of Action Was Alleged on the Face of the Complaint*

First, it is well-settled law that a plaintiff is the master of his own complaint and totally avoids federal removal jurisdiction by relying exclusively on state law causes of action -- even if he does so intentionally. *Rivet v. Regions Bank of Louisiana*, 118 S.Ct. 921, 925 (1998); *Joyce v. RJR Nabisco Holdings Corp.*, 126 F.3d 166, 171 (3d Cir. 1997) and *Kline v. Security Guards, Inc.*, 386 F.3d 246, 252 (3d Cir. 2004) (“plaintiff [is] the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”)

Second, the Court looks to the “face of the complaint” in determining whether a plaintiff is relying exclusively on state remedies: this is known as the “well-pleaded complaint” rule. *See Rivet* at 118 S.Ct. 925; *Joyce* at 126 F.3d 171.

Third, “a case may not be removed to federal court on the basis of a federal defense, . . . even if the defense is anticipated in the plaintiff’s complaint . . . .” *Rivet* 118 S.Ct. at 925 (quoting *Franchise Tax Board of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 14 (1984)).<sup>5</sup>

Fourth, removal statutes are to be strictly construed. . .and the burden of establishing that a case falls within the Court’s removal jurisdiction falls upon the removing party. . . . *State of N.Y. v. Lutheran Center for the Aging, Inc.*, 957 F.Supp. 393, 397 (E.D.N.Y. 1997) (citing *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d

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<sup>5</sup> The defendants’ reliance on *Jamison v. Wiley*, 14 F.3d 222 (4<sup>th</sup> Cir. 1994) is misplaced. As noted in *Jamison*, and discussed further below, the removal statutes relied upon by the defendant were specifically designed to allow federal employees to remove cases from state court even if the claim was a state-based claim. *Id.* at 238-239. *See Mills v. Martin & Bayley, Inc.*, 2007 WL 2789431, 8 (S.D.Ill. 2007) citing *Brown & Williamson Tobacco Corp. v. Wigand*, 913 F.Supp. 530, 533-34 (W.D.Ky. 1996) (“[T]he statute’s purpose is to protect ... federal officials [by providing them] with an unbiased federal forum,” and this purpose is not implicated when a private defendant “is not implementing any federal policy at the direction of federal officers or agents.”)

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Cir.1990), *cert. denied*, 498 U.S. 1085, 111 S.Ct. 959, 112 L.Ed.2d 1046 (1991); *Greenfield v. National Westminster Bank USA*, 846 F.Supp. 302, 304 (S.D.N.Y.1994); and *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir.1994) (“removal statutes are construed narrowly; where plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand.”))

Fifth, while the Notice of Removal here states that several federal laws are “involved” or “implicated” -- that is neither true *nor even relevant*. While a plaintiff may not avoid federal jurisdiction through an “artful pleading,” that exception applies only in two very limited situations. *See Rivet at 118 S.Ct 923 and Joyce at 126 F.3d 171*. It is a very limited exception — pursuant to which plaintiff cannot avoid removal by declining to plead “necessary federal questions.” *Rivet at 118 S.Ct. 923* (emphasis added.) However, it applies only when Congress has either so completely preempted, or so entirely substituted, a federal cause of action for a state one, that plaintiff cannot avoid removal by declining to plead such a “necessary federal question.” *Id.* For example, where Congress has expressly provided for the removal of particular actions asserting state law claims in state court, the complaint must be removed even if the federal question is not pled. *See, e.g., Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6-7, 123 S.Ct. 2058, 156 L.Ed.2d 1 (2003) (explaining that the Price–Anderson Act presents an exception to the well-pleaded complaint rule because it “expressly provides for removal of [tort actions arising out of nuclear accidents] brought in state court even when they assert only state-law claims”).

In short, the plaintiff is free to openly and intentionally “avoid federal jurisdiction by pleading only state claims even where a federal claim is also available.” *Marcus v. AT&T Corp.*, 138 F.3d 46, 52 (2d Cir.1998) (emphasis added.)

With this standard in mind, the case at bar is just a basic, vanilla state partnership claim. This is not a case where plaintiff has “cloth[ed] a federal law claim in state garb” by pleading state law claims that actually arise under federal law. *Travelers Indem. Co. v. Sarkisian*, 794 F.2d 754, 758 (2d Cir.1986). While the defendants argue that this case will ultimately have effects on tax issues -- under the counts pled and the relief sought, Hamed's is a state law action premised solely on a state law claim.<sup>6</sup>

One final comment is in order. The defendants cite *Grable & Sons Metal Products, Inc.*, 545 U.S. 308 (2005) in support of their claim that this is a federal case because it is a state law action that will depend on the interpretation of federal law. In *Grable*, the plaintiff filed a suit in state court against the purchaser of his property at a tax sale conducted by the IRS for back taxes. The plaintiff was trying to set aside the IRS tax sale because he claimed the IRS had given him improper notice of the sale. The Supreme Court found that the case could be removed because it *primarily involved an interpretation of the federal statute* pursuant to which the IRS gave notice of the sale.

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<sup>6</sup> As previously noted, merely implicating a collateral federal statute which *might* have been pled because a federal statute is *implicated* is irrelevant to the removal issue. See, e.g., *State of New York v. Lutheran Center for the Aging, Inc.*, 957 F.Supp 393, 398-400 (E.D.N.Y. 1997) (holding that liability for Medicaid payments paid by New York to defendant which New York alleged should have been paid under Medicare is determined by state law and there was no basis for federal jurisdiction.) See also *Hansen v. Harper Excavating, Inc.* 641 F.3d 1216, 1220 (10<sup>th</sup> Cir. 2011), involving an implicated federal statute, which stated in part:

Under the well-pleaded complaint rule, in order to invoke federal question jurisdiction under 28 U.S.C. § 1331 and thus to be removable on that basis, a federal question must appear on the face of the plaintiff's complaint; that the defendant possesses a federal defense is not sufficient to invoke federal question jurisdiction. *Felix*, 387 F.3d at 1154. Generally, the plaintiff is the master of his complaint, and if he files in a state court pleading only state-law causes of action, the case is not removable to federal court based on federal question jurisdiction. *Id.* (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987)).

Unlike the facts in *Grable*, the complaint in this case states a cause of action that will depend on the local partnership law of the Virgin Islands, not the interpretation of any federal statute. Thus, the holding in *Grable*, which the Supreme Court noted had a very, very limited application, is easily distinguishable.

In summary, there is no federal law that states that USVI partnership actions must be brought in federal court just because tax issues might result based on the outcome of the case. Virtually every business, partnership and corporate case would be a federal matter under such a rule.

*B. Criminal Defendants aren't "Acting Under" Federal Officers due to a Plea Deal*

Defendants' alternative argument is that they are somehow "acting under" a federal officer or agent with regard to the existence of a partnership because they are criminal defendants entering into a plea agreement. As such, they allege they are acting as federal officers or "under" their authority in complying with the plea agreement in a federal criminal prosecution. To support this proposition, the defendants cite to *Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 152, 127 S.Ct. 2301, 2307 (2007). However, *Watson* held the opposite -- that "the help or assistance necessary to bring a private person within the scope of the statute does not include simply *complying* with the law". . . [mentioning, as specific examples] "well-behaved federal prisoners" and "taxpayers."<sup>7</sup> Thus, *Watson* does not support the defendants' arguments in this case.

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<sup>7</sup> *Watson* involved a claim by Phillip Morris that it was entitled to protection as a federal officer because its actions for which it was being sued were done under the testing methods of the Federal Trade Commission. The Supreme Court addressed what conduct constitutes acting under an agency or officer of the United States, which the Supreme Court held is strictly limited:



Contrary to defendants' tortured reading, "acting as a federal officer" must involve "an effort to assist, or to help carry out the *duties or tasks* of the federal superior. . . ." *Id.* at 2307 (emphasis added.) See also 166 ALR, Fed. 297, *Who is "Person Acting Under" Officer of United States or Any Agency Thereof for Purposes of Availability of Right to Remove State Action to Federal Court Under 28 U.S.C.A. § 1442(A)(1)*. Certainly the obligations that the defendants agreed to under the plea agreement were not the "duties or tasks of the federal superior." *Morgan v. Ford Motor Co.*, 2007 WL 2137831, 1 (D.N.J. 2007) (conduct not "acting under" such authority where defendant "was governed by a series of administrative consent orders and it was doing exactly what the Environmental Protection Agency told it to do") *citing Watson*.

In short, even though United Corporation (the only remaining criminal defendant) is required to file an accounting as a regular matter of filing its tax returns in order to comply with the federal plea agreement in question, it does not become an officer of the United States, nor is it then acting under color of federal law, in doing so.<sup>8</sup> Thus, this argument does not create federal jurisdiction in this Court.

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A private firm's compliance (or noncompliance) with federal laws, rules, and regulations does not by itself fall within the scope of the statutory phrase "acting under" a federal "official." *Id.* at 143.

<sup>8</sup> Indeed, United is required by law to file proper tax returns, a point also addressed in *Watson*. If doing so requires it to properly address the partnership profits as an operating agent of the three supermarkets in question, then it is required under the plea agreement to do exactly that, as the partnership claims are not inconsistent with the fact that United has done the accounting or paid gross receipts tax as the operating agent for the partnership. Indeed, this is not the first time that a partner who either controlled the corporate entity through which activities were undertaken or filed the tax returns then attempted to "take over" the partnership based on the ownership of the operating entity or the content of documents so filed. See, e.g., *Khader v. Hadi*, 2010 WL 5300876 (E.D.Va. 2010)(filed under the same section of the UPA); *Mardanlou v. Ghaffarian*, 135 P.3d 904 (Utah App. 2006)(same) and *Al-Yassin v. Al-Yassin*, 2004 WL 625757 (Cal.App.1st Dist. 2004)(same, with 2 brothers).

*C. No Tax or Criminal Issues are Pled*

Finally, the defendants argue at some length that the Complaint is really a claim involving Virgin Islands tax matters, so that somehow this Court has exclusive jurisdiction over this case pursuant to 48 U.S.C. §1612(a).<sup>9</sup> Despite the various ways the defendants try to argue this point, the Complaint is not a civil (or criminal) proceeding based upon Virgin Islands tax law. More importantly, it is not a proceeding involving tax claims against the Virgin Islands Internal Revenue Bureau (IRB) or the United States Internal Revenue Service (IRS), which is the precise jurisdiction established by 48 U.S.C. § 1612(a). This fact distinguishes the one case relied upon by the defendants, *Birdman v. Office of the Governor*, 677 F. 3d 167 (3<sup>rd</sup> Cir.2012), as that case involved a claim filed directly against the IRB and the IRS for tax refunds.<sup>10</sup>

In fact, the ultimate filing of tax returns with the IRB or the IRS is not "necessary" to the determination of the partnership rights and duties disputed in this case. Moreover, the fact that the determination of partnership rights might have subsequent

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<sup>9</sup> That section states in relevant part as follows:

"The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction . . . and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. . . .

<sup>10</sup> By analogy, just because a personal injury plaintiff in the Superior Court might have a claim involving his tax returns becoming evidence in determining the validity of his lost wages or future impaired earnings claim (and might require a change to later filings) does not make his local claim now one subject to the exclusive jurisdiction of this Court!

tax ramifications is not a basis for federal jurisdiction.<sup>11</sup> In any event, the Complaint filed in the Superior Court is not a claim based upon, or where relief is sought under 48 U.S.C. §1612, so this argument must also be rejected.

*D. Supplemental Jurisdiction*

Finally, Defendants allege on page 9 at paragraph 34 that supplemental jurisdiction applies, arguing:

Lastly, pursuant to the bases of original jurisdiction set forth above, this Court has supplemental jurisdiction over all the claims set forth in the Complaint, because the claims "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

However, because there are no claims in the complaint for which there is federal jurisdiction, there can be no supplemental jurisdiction.<sup>12</sup>

**III. Conclusion**

As set forth herein, an entire body of law developed over many years supports a plaintiff's right to be the master of his complaint. In this case, the plaintiff pled exactly what he wanted to prove -- a partnership. The pleadings regarding the partnership are clear and are fully supported by the attached documents, which include (1) a sworn admission by Mr. Yusuf that the partnership owns the three supermarkets in question and the profits therefrom, and (2) extensive correspondence from Mr. Yusuf's lawyer

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<sup>11</sup> The defendants' repeated assertion that this case also involves a pending criminal matter is equally irrelevant. It is a civil action filed by a plaintiff, Mohammad Hamed, **who is not even a defendant in the criminal action** in the referenced case. In any event, even if a private civil action had an indirect impact on a federal criminal action, there is no legal basis for now finding that the civil action a "federal question."

<sup>12</sup> To the extent the defendants are trying to consolidate this case with the pending criminal case, that argument is absurd, as the plaintiff, Mohammad Hamed, is not a defendant in the criminal case. Indeed, there is no procedural rule allowing a criminal case and a civil case to be consolidated.

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(acting as his agent with regard to this exact issue) about the existence of the partnership, clearly identifying its assets.

In short, there is no basis for finding federal jurisdiction. Thus, this matter should be remanded back to the Superior Court of the Virgin Islands.

**Dated:** October 11, 2012

*/s/ Joel H. Holt*

**Joel H. Holt, Esq.**

*Counsel for Plaintiff*

Law Offices of Joel H. Holt  
2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
Telephone: (340) 773-8709  
Email: holtvi@aol.com

**Dated:** October 11, 2012

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

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

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
Telephone: (340) 719-8941  
Email: carl@carlhartmann.com

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of October, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

**Joseph A. DiRuzzo, III**

Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup>. 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  
Fax: 973-842-0755  
Email: dewoodlaw@me.com

*/s/ Joel H. Holt*

# **EXHIBIT A**

**From:** Nizar DeWood <dewoodlaw@gmail.com>  
**To:** Wally Hamed <wallyhstx@yahoo.com>  
**Sent:** Friday, February 10, 2012 10:58 AM  
**Subject:** Powers of Attorney - Dissolution of Partnership

Hello Wally,

I wish to confirm our discussions in the following two matters: 1) Power of Attorneys to verify and audit financial information currently in dispute, 2) Partnership Dissolution.

**I. Power of Attorney**

As agreed between you and Mr. Yusuf, the Power of Attorney will be required for each of you, your father, brothers, wife, and adult children. This power of attorney will be limited to obtaining any and all information regarding bank and investment accounts that may have been opened, closed, used for wire transfers, and opened on behalf of other third parties. The banks that will be covered will include the Virgin Islands, St. Maarten, New York, and the Middle East.

Any and all information obtained will be held in confidence by my office, and will be used for the sole purpose of financial verification.

**II. Dissolution of Partnership (Yusuf & Hamed)**

I will be sending a formal notice of partnership dissolution notice, with a list of to-dos that will be required to complete an orderly dissolution. See attached email. I understand that you and Mr. Yusuf are still discussing various terms and aspects of the dissolution. I will await the final decision made.

Your mailing address to address all originals will be:

**Mohammad Hamed**

**Walid Hamed**

**PO 763**

**Christiansted, VI 00821**

Thank you.

Nizar A. DeWood, Esq.

The DeWood Law Firm

3070 Kronprindsens Gade, Suite 208

St. Thomas, V.I. 00802

T. (340) 774-0405

F. (888) 398-8428



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info@dewood-law.com

**Mohammad Hamed  
c/o Walid Hamed  
PO Box 763  
Christiansted, V.I. 00821**

VIA EMAIL ONLY

Re: **Dissolution of Partnership  
Yusuf & Hamed**

Dear Mr. Hamed,

This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well-executed agreement memorializing the understanding of the parties.

As it stands, the partnership has three major assets: Plaza Extra – West (Grove Place, including the real property), Plaza Extra – East (Sion Farm) and Plaza Extra (Tutu Park, St. Thomas). I have been advised that there are ongoing discussions between you, as your father's fully authorized agent, and Mr. Yusuf regarding which of the stores each partner will retain upon dissolution. Accordingly, I will await the final decision that you and Mr. Yusuf may reach.

Additionally, as Mr. Yusuf has indicated, he remains resolute about the rental terms of the Plaza Extra – East. Unless the parties arrive at a different understanding, I will assume that Mr. Yusuf will not agree to continue the lease beyond June 30<sup>th</sup>, 2012 on that property.

I look forward to hearing from you. Thank you.

Sincerely,

  
Nizar A. Dewood, Esq.

cc: Fathi Yusuf

**From:** "Nizar DeWood" <dewoodlaw@gmail.com>  
**Date:** March 13, 2012 12:41:36 PM EDT  
**To:** "Wally Hamed" <wallyhstx@yahoo.com>  
**Subject:** Partnership dissolution agreement

Salam Wally,

Please find the attached proposed Partnership Dissolution Agreement. I look forward to hearing from you at your earliest convenience. 

Thank you.

Nizar A. DeWood, Esq.

The DeWood Law Firm  
3070 Krouppindsens Gade, Suite 208  
St. Thomas, V.I. 00802  
T. (340) 774-0405  
F. (888) 398-8428



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## PROPOSED PARTNERSHIP DISSOLUTION AGREEMENT

→ THIS AGREEMENT, dated this \_\_\_\_ day of March 2012, is by and between FATHI YUSUF and MOHAMMAD HAMED (collectively called "Partners"), formerly partners of a partnership known informally as *Yusuf & Hamed* (the "Partnership").

→ WHEREAS, the Partners have operated the Partnership under an oral partnership Agreement since 1986.

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

WHEREAS, serious dispute and disagreement between the partners relating to financial matters of the partnership, resulting in the partners unable to continue as partners; and

WHEREAS, Fathi Yusuf (the "Withdrawing Partner") has withdrawn from the Partnership by written notice dated February, 2012, for withdrawal as of February 10<sup>th</sup>, 2012 (the "Withdrawal Notice"); and

WHEREAS, the Partners desire to dissolve the partnership by way of liquidation and distribution of its assets, unless each partner submits in writing a buyout offer for each of the three major assets constituting the partnership, as herein shown in Section 1 of this agreement; and

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

→ WHEREAS, the Partners have certain rights and responsibilities under the Virgin Islands Revised Uniform Partnership Act ("Act") governing dissolution of partnerships, and hereby desire to vary or confirm by the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions contained herein, the parties agree as follows:

**SECTION 1. ASSETS SUBJECT TO LIQUIDATION**

The Partners agree that the following three on-going businesses constitute the assets of the Partnership.

**Section 1.1: Assets of the Partnership**

- 1. **PLAZA EXTRA EAST- Estate Sion Farm, St. Croix**
- 2. **PLAZA EXTRA WEST- Estate Grove, St. Croix (Super Market Business ONLY)**
- 3. **PLAZA EXTRA -- Tutu Park, St. Thomas**

**Section 1.2. Dissolution of Partnership.**

The Partnership shall be dissolved effective as of the date specified in the Withdrawal Notice, and the business of the Partnership shall cease effective February 10<sup>th</sup>, 2012. Any continuing operation shall be for the sole purpose of winding down the partnership. The parties agree that the Withdrawal Notice is effective to dissolve the Partnership and is not a breach of the partnership relationship. The parties agree to the following buyouts of the assets listed in Section 1.1.

**Section 1.3 FIRST PARTNERSHIP ASSET: Plaza Extra East -- Sion Farm, St. Croix**

Partner Fathi Yusuf ("Partner Yusuf") has orally terminated the lease agreement for Plaza Extra East in September 2010. A written confirmatory termination letter was mailed on January 20<sup>th</sup>, 2012. Partner Yusuf shall make the following buy-out offer:

- 1. Acquire the assets & fixtures - \$250,000 (50% of Partner Hamed's interest)
- 2. Acquire Inventory based on cost (50% of Partner Hamed's Interest).
- 3. The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.

Should the foregoing terms of the buyout offer set forth in paragraphs 1 to 3 above is rejected, the assets, fixtures, and inventory of Plaza Extra -- East shall be liquidated and the

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premises turned over to Partner Yusuf immediately. Partner Yusuf, by virtue of his ownership of the premises, will hereby enforce the new rental rate of \$200,000 per month commencing January 31, 2012 until March 31<sup>st</sup>, 2012. Thereafter, the monthly rental rate shall increase to \$250,000 per month until June 30<sup>th</sup>, 2012. After such date, the tenancy shall terminate forthwith without further notice. Failure to vacate the premises by June 30<sup>th</sup>, 2012 shall result in an action for unlawful detainer be filed in the Superior Court of the Virgin Islands.

**Section 1.4 SECOND PARTNERSHIP ASSET: Plaza Extra West – Grove Place, St. Croix**

Partner Yusuf hereby makes the following buy-out offer:

1. Acquire the assets & fixtures - \$375,000 (50% of Partner Hamed's interest).
2. Acquire Inventory based on cost (50% of Partner Hamed's Interest).
3. Acquire Lease for the premises for a term of 20 years, with an option to terminate lease subject to a SIX (6) months written notice. Rent is hereby offered for \$24,000 a month. Property tax assessments shall be paid in half by each partner.
4. The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.
5. All inventory, improvements, and fixtures will be transferred by a Bill of Sale, with the applicable UCC-4 Bulk Transfer notices according to the terms set out in Exhibit B of this Agreement at the time of closing.

**Section 1.5**

**THIRD PARTNERSHIP ASSET: Plaza Extra – Tutu Park, St. Thomas**

**1.5.1** Unless Partner Hamed makes a written offer for the purchase of Plaza Extra -- Tutu Park, St. Thomas, said business shall be liquidated with its assets, inventory, and fixtures sold at fair market value. The lease for this asset shall expire on October 27<sup>th</sup>, 2018, and is in the name of United Corporation only. Should Partner Hamed wishes to make an offer for the purchase of Partner Yusuf's partnership interest in Plaza Extra Tutu Park, St. Thomas, Partner Hamed shall do so in writing within 14 days.

1.5.2 Should Partner Hamed refuse to offer to purchase said asset, Partner Yusuf hereby makes the following written offer of purchase:

- i) Partner Hamed's fifty (50%) interest in Inventory at actual cost plus freight and insurance to be determined at time of closing.
- ii) Equipment and fixture at \$250,000 (50% interest of Partner Hamed).
- iii) The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.
- iv) Partner Yusuf agrees to pay \$1,000,000 a year to Partner Hamed until the expiration of the lease on October 27<sup>th</sup>, 2018 for a total lease amount of \$6,500,000. Partner Yusuf will also assume all obligations under the lease currently existing in the name of United Corporation, and guaranteed personally by Partner Yusuf.

**1.5.3 Rejection of Offer:** Should Partner Hamed reject the terms of the offer provided in section 1.5.2, Partner Hamed may acquire the Plaza Extra -- Tutu Park, St. Thomas within 14 days of date of this agreement on the same aforementioned terms.

**SECTION 2.0**

**PARTNERSHIP CONTRIBUTIONS**

The parties agree to address the following outstanding partner and partnership obligations

	<u>Description of Partnership Obligation</u>	<u>Agreed Upon Course of Action to Resolve Dispute</u>
1.	Rent (for the period of May 5 <sup>th</sup> , 2004 to Dec. 31st, 2011). Partnership Yusuf & Hamed owe rent arrears of \$5,408,806.74 to Partner Yusuf as owner and landlord of the property upon which Plaza Extra East is located.	The parties agree that said amount was paid on February 13 <sup>th</sup> , 2012 by way of check drawn on the account of United Corporation. Accordingly, the rental arrears for the period of (May 5 <sup>th</sup> , 2004 to Dec. 31 <sup>st</sup> , 2011) are now satisfied.
2.	Other Outstanding Rent (Pre 2004). The partners shall discuss and calculate the rent owing to Partner Yusuf for an approximate period of 10 years, for the 10 years prior to May 5 <sup>th</sup> , 2004.	The rental term and rent amount due will be determined upon the return of the partnership records from the U.S. Government.

**SECTION 3.0**

**OTHER FINANCIAL DISPUTES**

The parties acknowledge that serious financial disputes have arisen between the parties. Specifically, Partner Yusuf desires a full accounting of certain disputes with Partner Hamed and his agent Waleed Hamed and Waheed Hamed, and all of their spouses, children, assigns, and agents.

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The parties agree that the following items of financial disputes will be negotiated, investigated, and resolved in good faith by the parties.

	<u>Description of Financial Dispute</u>	<u>Agreed Upon Course of Action to Resolve Dispute</u>
1.	<p>Partner Yusuf alleges that Two Million Dollars (\$2,000,000) was transferred from Banque Francaise Commerciale in St. Maarten to Arab Bank, Ltd., specifically to an Arab Bank Branch in the West Bank, Palestine. Partner Hamed disputes this allegation. Partner Yusuf's allegation arises out of facts obtained during a criminal investigation by the Federal Bureau of Investigation that concludes there was a transfer of \$2,000,000 to the benefit of Partner Hamed.</p> <p>Partner Yusuf desires full accounting and verification of all financial discrepancies, and irregularities currently existing, or that may arise during the dissolution of the partnership.</p> <p>The parties hereby agree to negotiate and resolve this matter fully and in good faith.</p>	<p>1) Partner Hamed agrees to execute a special power of attorney authorizing the DeWood Law Firm, its attorney, agents, and assigns, to obtain <u>ALL</u> bank account information for any bank account that may have been opened, including but not limited to the following banks:</p> <ol style="list-style-type: none"> <li>1. Arab Bank, Ltd (Worldwide branches)</li> <li>2. Banque Francaise Commerciale in St. Maarten.</li> <li>3. Cairo-Amman Bank (worldwide branches)</li> <li>4. Bank of Nova Scotia (worldwide branches)</li> <li>5. Merrill Lynch Investments</li> <li>6. First Bank (formerly known as VI Community Bank)</li> <li>7. Any other Bank either party determines to be relevant for purpose of inquiry, investigation, and full accounting.</li> </ol>

**2. Notice to Withdraw.** Partners agree to give actual notice of the dissolution of the Partnership to all creditors who have extended credit to the Partnership prior to dissolution

3. **Determination and Distribution of Capital Account.** The Partnership will cause to be prepared financial statements as of the date specified in the Withdrawal Notice, including a balance sheet specifying the assets, liabilities, and equity accounts, and an income statement for the portion of the year then ended. The financial statements will also detail all accounts payable and accounts receivable of the Partnership. The cost of obtaining such financial statements shall be borne by the Partnership, and the expense of preparation of such financial statements shall be reflected in income or loss as of the date specified in the Withdrawal Notice.

The capital account of the Withdrawing Partner will include the Withdrawing Partner's actual equity account plus the Withdrawing Partner's share of income or minus the Withdrawing Partner's share of loss according to the Sharing Ratio as of the date of the financial statements. The parties agree that these financial statements will conclusively reflect the accounts of the Partnership. The capital account of the Withdrawing Partner shall be distributed to the Withdrawing Partner in cash within 30 days following the date specified in the Withdrawal Notice.

5. **Loans.** The Partnership has no loans outstanding other than Accounts Payable with inventory suppliers.

6. **Ledgers and Files.** The Partnership shall, at the Partnership's expense, copy all ledgers and files of the Partnership for the Withdrawing Partner's use upon the reasonable written request by the Withdrawing Partner which specifies the ledgers and files and is delivered to the Partnership at least 10 days before the date specified in the Withdrawal Notice.

7. **Full Disclosure and Access to Records.** All parties agree to fully disclose all facts which relate to the operation of the Partnership and warrant and represent that all material facts concerning the financial condition and operation of the Partnership have been fully disclosed to each other. All parties shall have full access to the books and records of the Partnership, including client files, for purposes of verifying information furnished under this Agreement until this Agreement.

8. **Assets and Liabilities of the Partnership.** Upon payment of the amounts due to the Withdrawing Partner hereunder, all assets and liabilities of the Partnership as they exist on the financial statements dated as of the date specified in the Withdrawal Notice shall belong to the remaining Partners, and the Withdrawing Partner shall claim no right, title, or interest therein.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first written above.

→ \_\_\_\_\_  
Fathi Yusuf, Partner

→ \_\_\_\_\_  
Mohammad Hamed, Partner



# **EXHIBIT B**

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

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

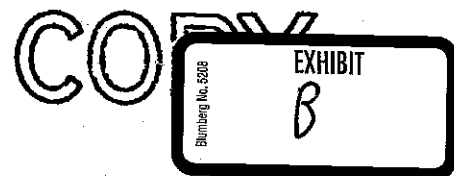
THE ORAL DEPOSITION OF FATHI YUSUF

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

Reported by:

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

Cheryl L. Haase  
(340) 773-8161



FATHI YUSUF -- DIRECT

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

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

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

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

Cheryl L. Haase  
(340) 773-8161

FATHI YUSUF -- DIRECT

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

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

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

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

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

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

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

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

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

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1 saving money.

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

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

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

Cheryl L. Haase

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

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

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

16 How we going to get paid?

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

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

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

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

15 Q. Uh-huh.

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

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



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

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

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

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

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

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

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

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

13 Now, should I ask him or continue?

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

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

20 A. Repeat the question please.

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

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