

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

UNITED CORPORATION,)	CIVIL NO. SX-13-CV-<u>3</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
)	

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, Nejeh 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 Untied 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 damage's 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;

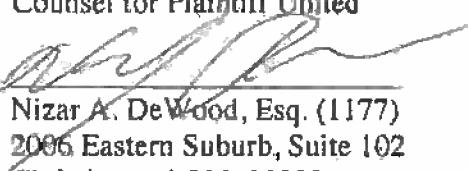
- ii. Accessing, or attempting to access, any bank accounts belonging to Plaintiff United Corporation for any purpose;
- iii. Contacting, or attempting to contact, any employee of Plaintiff United concerning the operations and management of the Plaza Extra Supermarkets;
- iv. Preclude Defendant Hamed 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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