

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

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED
Plaintiffs,

vs.

FATHI YUSUF & UNITED CORPORATION,
Defendants,

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

CASE # SX-12-CV-370

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

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

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

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

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

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

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

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

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

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

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

Relevant Testimony:

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

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

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

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

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

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

Relevant Factual Findings of the Court:

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

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

Relevant Conclusions of Law:

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

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

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

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

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

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

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

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

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

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

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

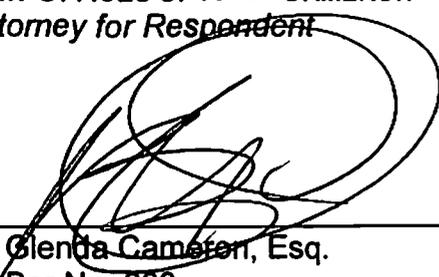
For all the above stated reasons, Intervenors respectfully request that the Court resolve the motion to intervene as expeditiously as possible, and enter an Order on their motion so that, an appeal from the April 25 Order of the Court may be perfected.

RESPECTFULLY SUBMITTED,

LAW OFFICES OF K. G. CAMERON
Attorney for Respondent

Dated: May 9, 2013

By: _____



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I hereby certify that on May 9, 2013, a true and accurate copy of the foregoing was forwarded via email to the following persons of counsel:

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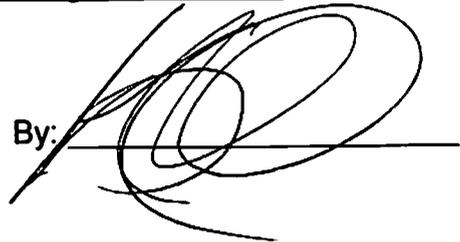


EXHIBIT A

1 A Yes, sir.

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

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

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

7 A My oldest son is Waleed Hamed.

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

10 A No.

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

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

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

19 A After the work in the supermarket.

20 Q Okay.

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

25 Q Okay.

1 Q Those are all the questions I have.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. DAVID:

5 Q Good afternoon, Mr. Hamed.

6 A Good afternoon.

7 Q Sir, while you were testifying I was writing
8 some things down, I want to make sure I understood what
9 you said, okay?

10 A Please, take it easy. Sometime I don't hear you
11 too good.

12 Q Yes, sir. I will try to talk loud enough and
13 slow enough so you can hear me; is that fair?

14 A Yeah. Go ahead.

15 Q You testified that you initially gave Fathi
16 Yusuf \$14,000; do you remember that?

17 A 14,000?

18 Q Yes.

19 A Yes, sir.

20 Q And that -- and then --

21 A And that time I bring to him in the socks. You
22 know, the socks.

23 Q Yes, sir.

24 A I put it inside the socks. Me and my wife went
25 to her sister, his wife, to Mr. Yusuf.

1 Q Okay. And --

2 A And I asked her for -- where is Fathi tell me he
3 is in the shopping center. He was building the shopping
4 center.

5 Q Okay.

6 A And she told me, please, go and get him from the
7 shopping center.

8 Q Okay.

9 A To the house here.

10 Q I'm going to -- I'm going to try to stay
11 focused. Let me ask you another question?

12 A I went to shopping center and I find Mr. Yusuf
13 there. I tell him, let's go home, take a cup of coffee.
14 He said, Hamed, I owe the people money, I don't know how I
15 going to pay him tomorrow. I told him, look, the money, I
16 have in your house. You going to pay him and more you
17 have. He said where? I said, in your house by your wife.
18 Let's go home.

19 He went drive his car and I go behind him to the
20 house, drink the coffee. And he get the socks and open it
21 and start to check. He tell me how much? I tell him, you
22 check it. He check it. He tell me 14,000.

23 Q Okay.

24 A I tell him what I save and my grocery in my
25 business, that's what I have.

1 Q Okay.

2 A And I promise you any time I'm going to save
3 5,000, 10,000 whatever, I will bring it to you because
4 it's his brother used to send him back up when he build
5 it.

6 Q Okay. The next amount of money that you gave
7 him was a CD for \$20,000; is that correct?

8 A Yes.

9 Q Okay. And then --

10 A I gave him more than one time.

11 Q And then the next time was \$10,000; is that
12 correct?

13 A Yes.

14 Q Okay. And then you sold your store at Carlton
15 and at Glynn? You sold your two stores?

16 A I used what?

17 Q You sold your two stores, correct?

18 A Yes.

19 Q How much money did you give to Mr. Yusuf Fathi
20 Yusuf from that store?

21 A I give him whatever he asked me. \$200,000.

22 Q Do you recall that it was exactly \$200,000?

23 A Yes, sir.

24 Q Now, you said something about a million dollars
25 from Banco Popular, was that a loan?

1 A It's a loan he took from the bank.

2 Q Okay.

3 A I don't have no name. I told him -- he tell me
4 the bank they don't want nobody, so they have a partner
5 with the supermarket.

6 Q Okay.

7 MR. HARTMANN: I'm sorry, let him answer.

8 MR. DAVID: I'm letting him answer, sir.

9 I'm sorry, Judge, are we getting one lawyer here
10 or two?

11 MR. HARTMANN: I'm sorry.

12 MR. HOLT: But he needs to let him finish.

13 MR. DAVID: I apologize to the Court and to
14 counsel, and to the witness, sir.

15 THE COURT: That's fine.

16 BY MR. DAVID:

17 Q Please continue, sir.

18 A Yeah, They give us one million and They stop.
19 He come -- Fathi come to me and tell me, you know, how
20 much, Hamed we're going to be interest for that? I tell
21 him, no, you can take care of the office and I'm in the
22 warehouse I'm in charge in the warehouse so it's even.
23 He said \$16,000 a month, you pay 8. I tell him,
24 why not? I'm work with you even if I getting winner or I
25 get lose.

1 Q Okay.

2 A With sailboat. He said, okay, I want to know,
3 you know that. I tell him, okay, I know that.

4 Q Are you still working at the stores?

5 A Long time I retired.

6 Q Okay. Was there another loan for two and a half
7 million dollars?

8 A A what?

9 Q Was there another loan for two and a half
10 million dollars?

11 A Yes.

12 Q From whom?

13 A From the Bank of the Virgin Islands, Nova
14 Scotia, and then the other side, what you call it? I
15 forget the name.

16 Q Did you sign the loan documents?

17 A I'm not sign nothing.

18 Q So on the million-dollar loan that we talked
19 about you're not signed either?

20 A Fathi is the one, he sign. Mr. Yusuf the one he
21 sign with the loan, the first one and the second one.

22 Q Okay. Sir, did you sign an affidavit in this
23 case?

24 A For who?

25 Q Did you -- Do you know what an affidavit is,

1 sir?

2 A Affidavit I give my son.

3 Q What for? Why did you give your son an
4 affidavit?

5 A Why?

6 Q Yes, sir.

7 A Well, I forget at that time what he told me.
8 And he tell me sign the paper. He wants me, I sign it. I
9 give to him.

10 Q Did you read the paper before you signed it?

11 A He give me the paper.

12 Q Okay. Did you read the paper before you signed
13 it?

14 A I'm not read English, I tell you the truth.

15 MR. DAVID: I'm going to show him his
16 affidavit.

17 MR. HOLT: Sure.

18 BY MR. DAVID:

19 Q Okay. Sir, have you ever seen that piece of
20 paper before?

21 A Yes.

22 Q What is that?

23 A That's my signature in there.

24 Q Do you know what the letters, the words on the
25 paper say?

1 A Well, I need somebody to read it and they
2 explain to me in Arabic.

3 Q You can't read the words on that piece of paper?

4 A I can't read it.

5 Q Okay. Did you read it before you signed it?
6 Before you wrote your name on it --

7 A I tell me son -- I believe what they have in
8 there. He explain to me and I forget what he told me.

9 Q Okay. That's all I have.

10 You can take that back.

11 Fathi Yusuf is your partner?

12 A Yes.

13 Q Is Fathi Yusuf partners with Waleed?

14 A Ha?

15 Q Is Fathi Yusuf partners with Waleed, your son
16 Waleed?

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

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

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

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

24 A Yes.

25 Q And nobody else?

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

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

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

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

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

12 BY MR. DAVID:

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

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

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

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

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

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

23 A For all the three store.

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

25 A You're welcome.

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

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED

Plaintiffs,

vs.

FATHI YUSUF & UNITED CORPORATION,

Defendants,

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

Intervenors.

CASE # SX-12-CV-370

ORDER

THIS MATTER is before this Honorable Court on behalf of Intervenor Defendants' Motion for Expedited Resolution of Prior Motion to Intervene and a Stay of the Court's Order Dated April 25, 2013. The Court having considered the premises and after being fully advised, it is hereby

ORDERED that the Intervenor Defendants' Motion is **GRANTED**; and it is further;

ORDERED that the Motion to Intervene is **DENIED**; and it is finally

ORDERED that the Court's Order dated April 25, 2013 is **STAYED**.

SO ORDERED this _____ day of _____, 2013.

ENTER:

JUDGE OF THE SUPERIOR COURT

VENETIA H. VELAZQUEZ, ESQ.,
Clerk of the Court

By: _____
Deputy Clerk

cc: K. Glenda Cameron, Esq.
Nizar DeWood, Esq.
Joseph A. DiRuzzo, III, Esq.
Joel H. Holt, Esq.