

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

MOHAMMAD HAMED, by his authorized agent WALEED HAMED,)	
)	
)	CIVIL NO. SX-12-CV-370
Plaintiff,)	
)	
)	ACTION FOR DAMAGES, INJUNCTIVE AND DECLARATORY RELIEF
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants.)	JURY TRIAL DEMANDED
)	

**PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Mohammad Hamed ("Hamed") hereby replies to Defendants' opposition to his motion for partial summary judgment. Several preliminary comments are in order.

First, Defendants filed a Rule 56(d) request to do discovery before having to respond to this motion, which the Court granted, giving them until September 16th to complete this discovery. However, **Defendants did no discovery, as they did not file any written discovery or take any depositions.** In short, as suggested in Plaintiff's Rule 56(d) response, the request for discovery was just another delaying tactic.

Second, contrary to United's suggestion, Plaintiff is not attempting to pierce United's corporate veil. As stated on page 2 of his Rule 56 motion, Hamed first seeks partial summary judgment regarding the existence of a partnership between himself and Fathi Yusuf for the three Plaza Extra supermarkets. He then seeks a determination pursuant to 26 V.I.C. § 71 (a) and (f) that he is entitled to (1) a 50% interest in its profits and (2) the right to participate in the management of the three stores. Defendants' opposition does not even contest this second point--that Hamed is entitled to 50% of the profits and the right to co-manage if a partnership exists.

Third, in addressing the partnership issue, Defendants simply ignore the *multiple* admissions made by Fathi Yusuf under oath in the *Idheileh* case—as well their judicial admissions in the filings in this Court.¹ Defendants appear to think they can avoid the legal significance of these admissions by just filing new affidavits from Fathi Yusuf and Maher Yusuf generally averring that their prior admissions are now disputed matters.

However, the Supreme Court of the Virgin Islands held in *Arlington Funding Serv., Inc. v. Geigel*, 2009 WL 357944, *7-8 (V.I. Supreme Ct. 2009) that a party is bound by his judicial admissions, so that an attempted “correcting affidavit” contradicting prior filings cannot create a disputed question of fact sufficient to defeat summary judgment. The Third Circuit refers to this as the “Sham Affidavit Doctrine” as noted in *In re CitX Corp., Inc.* 448 F.3d 672, 679 (3rd Cir. 2006):

That doctrine generally “refers to the trial courts’ practice of disregarding an offsetting affidavit that is submitted in opposition to a motion for summary judgment when the affidavit contradicts the affiant’s prior deposition testimony.” (Citations omitted).

As the U.S. Supreme Court stated in *Scott v. Harris*, 550 U.S. 372, 380 (2007):

When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

Thus, as will be discussed herein, Defendants can find no safe harbor in their last minute “correcting” affidavits submitted by the Yusufs.

With these comments in mind, Plaintiff will now respond to the arguments raised by Defendants. As set forth herein, it is respectfully submitted that Defendants’

¹ Indeed, United just filed a new “rent motion” on September 9, 2013, arguing Plaza Extra Supermarkets is a “partnership, joint venture or other unspecified business arrangement.” This recent judicial admission further supports the entry of partial summary judgment, as this Court has already held that a joint venture is a partnership under VI law (Conclusion ¶ 8 of this Court’s April 25th opinion.)

opposition fails to create a genuine issue of fact as to the existence of the partnership, so that partial summary judgment is appropriate as requested.

I. Counterstatement of Facts

A separate response to Defendants' Counterstatement of Facts has been filed, as required by LCI 56.1, with references to the record where appropriate. Rebuttal exhibits referred to therein are attached to this reply (so they are easy to reference). As was done by Defendants, citation to the PI Hearing Transcripts and Exhibits will be to those documents.

While Defendants listed 157 "facts" they contend are "in dispute," most are irrelevant and dozens are simply repetitious. Those remaining are directly contrary to the evidence in this case.² Most importantly, as will be discussed herein, not one of the Defendants' "facts" is adequate to create a genuine issue of fact sufficient to defeat summary judgment.

II. Statute of Frauds

The statute of frauds was extensively briefed in the Preliminary Injunction pleadings, which are incorporated herein by reference. After reviewing these arguments, this Court addressed this point (with extensive relevant citations) in its April 25th PI Opinion, stating in the Conclusions of Law ¶¶ 6-7 that (1) the statute of frauds was not applicable to this issue and (2) even if it were, it would still not be applicable due to the doctrine of part performance. As the Court has already addressed and resolved this issue, no further argument will be submitted.

² For example, Defendants assert that Plaintiff never received any profits from the Plaza Extra Supermarkets even though they have admitted in pleadings in this case that he is entitled to 50% of the profits and their interrogatory responses describe how these profits were divided between them.

III. Statute of Limitations

Hamed's claims are not barred by the statute of limitations, as the alleged violations of Hamed's partnership rights all occurred in 2012—as noted in the Complaint as well as the PI hearing testimony and this Court's April 25th findings. The evidence is clear that the complaint was triggered by Yusuf's unilateral removal of \$2.7 million from the partnership's operating account in August of 2012. Thus, the breach of Hamed's partnership rights occurred in 2012, well within the limitations period.

Indeed, the President of United, Maher Yusuf, testified that the partnership is *still* operational at the PI hearing (*1/25 Tr, pp 214:2-13*):

Q Why are you sending the notices to Mohammed Hamed?

A Because Mohammad Hamed has a business agreement. . . .

Q To operate the store?

A To operate the store. . . .

Q And you're still sending these letters to Mr. Hamed in 2012 and 2013, so I take it that business agreement is still in place?

A As far as I know. (Emphasis added.)

In short, there is a partnership agreement still in place to operate Plaza Extra, which is why United is also *still* sending rent notices to Mohammad Hamed addressed to him as the head of Plaza Extra Supermarkets. PEx 7 and **Exhibit A** attached. Thus, the statute of limitations has not run on Hamed's claim.³

IV. Alleged Retirement of Hamed from the Partnership

Defendants argue that Mohammad Hamed's retirement from the day-to-day work was the equivalent of his withdrawing from the partnership, terminating his interest and making him nothing more than a “creditor” of the partnership beginning in 1996.

³ Defendants try to confuse this issue by suggesting this cause of action accrued years ago when Yusuf allegedly divested himself of a significant part of his interest in United, triggering this limitations defense. However, that argument is misplaced, as the claims giving rise to this action, as alleged in the complaint, all occurred in 2012.

However, there is no evidence to support the assertion that Hamed retired from the *partnership* and withdrew from the business -- as opposed to him simply not working day-to-day—nor have the Defendants ever treated him as being retired.

In this regard, while it is undisputed that Hamed did not participate in the supermarket operations on a day-to-day basis after 1996, he still is an active partner, as can be seen in **(1) the letters sent to him regarding the proposed dissolution of partnership in 2012 (PEx. 10-12) and (2) the rent notices sent monthly from United to Hamed as head of Plaza Extra in 2012 and 2013.** PEx 7 and Exhibit A attached. If Defendants really believe Hamed is a “retired employee” unrelated to a partnership, why are these letters and notices still being sent to him by United and Yusuf?

Moreover, Hamed testified at the PI hearing that after 1996 his eldest son, Wally Hamed, acted pursuant to a power of attorney to undertake his day-to-day partnership responsibilities. 1/25 Tr, pp 46:1-10; 47:5-7; 47:18-48:2 and 202:18-25. Defendants are fully aware that Wally Hamed acts as his father's designated representative when he is away -- and have consented to it.

In this regard, Yusuf acknowledged in a verified statement (filed in the *Idheileh* case in 2000) that Wally Hamed was acting for his father and undertaking his father's day-to-day duties pursuant to the partnership. In that litigation, Yusuf signed an affidavit (four years after Hamed's alleged retirement) stating in ¶¶ 2-4, as follows (Depo Exhibit 6 to PEx 1):

- My brother in law, Mohamed Hamed, and I have been *full partners* in the Plaza Extra Supermarket since 1984 *while we were obtaining financing and constructing the store*, which finally opened in 1986.
- Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and *used our own capital and later obtained financing* to make the store ready for opening.

- Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage **his interests** for the family.

Since Yusuf's testimony in 2000, the parties continued doing business the same way for **13 more years**, as per Finding ¶ 31 of this Court's April 25th opinion:

31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores.

In fact, fifty percent of all profits were also still regularly distributed to Hamed after 1996 until the TRO in the criminal case. See, e.g., 1/25 Tr, pp 39-42 (detailing 50% of partnership profits *repeatedly* used to jointly buy hundreds of acres of land.)

In short, this "retirement" issue is just a "lawyer created" argument, unsupported by any competent evidence, as there are no facts to support Defendants' argument that Hamed withdrew from the partnership in 1996 or has acted in a manner consistent with terminating his interest.

V. Fathi Yusuf's "Intent"

Defendants have submitted an affidavit from Fathi Yusuf that they argue defeats summary judgment because he recants the sworn testimony he gave in the *Idheileh* case, now saying he never "*intended*" for Hamed to be his partner or for a partnership to exist. This argument is without merit for several independent reasons.

First, *subjective* "intent" to "form a partnership" is irrelevant under the UPA. Second, Yusuf admits he *did* enter into an oral agreement with Hamed which *objectively* meets all UPA criteria. Third, Yusuf's affidavit contradicts his judicial admissions in this case, so this Court can ignore it if it chooses to do so.

Regarding the first point, Yusuf admits in paragraph 5 that "[i]n 1984 I entered into an oral agreement with Mohammad Hamed" to operate a business and share profits,

although he never defines what he believes were the terms of that agreement. He does state in ¶ 7 that he did not "intend" for this agreement to be a partnership agreement, but in ¶ 6 he admits he did not know what the term "partnership" even meant in 1986. However, under the UPA, even assuming all of this to be true, these statements still do not defeat summary judgment.

As this Court correctly noted in Conclusions ¶¶ 2-4 of its April 25th opinion:

2. Under the UPA, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." 26 V.I. Code §22(a). In the mid-1980's when the Hamed – Yusuf business relationship began, a Virgin Islands partnership was defined as "an association of two or more persons to carry on as co-owners a business for profit." *Former* 26 V.I. Code §21(a).
3. Under the UPA, "A person who receives a share of the profits of a business is presumed to be a partner in the business ... " 26 V.I. Code §22(c)(3). Under the former Code provisions, "the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business ... " *Former* 26 V.I. Code §22(4).
4. Evidence of "a fixed profit-sharing arrangement" and "evidence of business operation" are factors to be considered in the determination of whether the parties in a business relationship had formed a partnership. *Addie v. Kjaer*, Civ. No. 2004-135, 2011 WL 797402, at 3* (D.V.I. Mar. 1, 2011).

In short, the lack of subjective intent to have a business agreement be called or even understood to be "a partnership" is not relevant.

To clarify this point, when the UPA was amended in 1997, it added language making it clear that subjective "intent" was irrelevant to the formation of a partnership, which the VI Legislature adopted in 1998 at 26 V.I.C. § 22 (emphasis added):

- (a) Except as otherwise provided in subsection (b) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, **whether or not the persons intend to form a partnership.**

Comment 1 to this new UPA section (attached hereto as **Exhibit B**) made it clear that this change just adopted the universally followed case law already in place, leaving the “substantive law” unchanged and further stating in part:

1. . . . The addition of the phrase, “whether or not the persons intend to form a partnership,” merely codifies the universal judicial construction of UPA Section 6(1) that a partnership is created by the association of persons whose intent is to carry on as co-owners a business for profit, regardless of their subjective intention to be “partners.” Indeed, they may inadvertently create a partnership despite their expressed subjective intention not to do so. The new language alerts readers to this possibility. (Emphasis added).

Case law predating this new language amply supported this clarification. See, e.g., *Bass v. Bass*, 814 S.W.2d 38, 41 (Tenn. 1991) (“it is not essential that the parties actually intend to become partners”). Subsequent case law has directly and unequivocally recognized that under both versions of the UPA, it is the objective intent to form a business association that meets the UPA elements -- not subjective intent to “form a partnership” that is controlling. See *Hillman v. Cannon*, 2011 WL 6670657, *2-3 (Iowa App. 2011) (Extensive discussion of the intent required as well as the effect of the 1998 changes to the UPA) and *Swecker v. Swecker*, 360 S.W.3d 422, 426 (Tenn.Ct.App. 2011) (it is “the intent to do the things which constitute a partnership that determines whether individuals are partners, regardless if it is their purpose to create or avoid the relationship.”)

Second, aside from the fact that subjective ‘intent’ is irrelevant, Yusuf never denies in his new affidavit what he has admitted *repeatedly* elsewhere -- that both men intended that Hamed split 50% of the profits from their “agreement.” Similarly, nowhere in Yusuf’s affidavit does he retract any of the other statements he made in the *Idheileh* case, which established the parameters of a partnership as follows:

- **Amount of Initial Contribution to Capital:** “my partner [plaintiff] . . . put in . . . \$400,000.” (PEx1, pp 18:9-10; 18:16 to 19:10)
- **Duration of Agreement and Splitting Future Risk of Loss:** “I’m obligated to be your [plaintiff’s] partner as long as you want me to be your partner until we lose \$800,000. If I lose 400,000 to match your 400,000, I have all the right to tell you, Hey, we split, and I don’t owe you nothing.” Also “If you pay penalty with me [amount invested plus \$150,000 plus 12% interest to the two leaving partners] and pay the interest with me, whatever they left is for me and you. But if I must pay them the one-fifty penalty and pay them 12 percent, then Plaza Extra Supermarket will stay three-quarter for Yusuf and only one-quarter for you.” (PEx 1, p 18:16-23.) . . . (PEx 1, pp 18:24-19:7.)
- **Share:** “*I tell him, You want my advice? I be honest with you. You better off take 50 percent. So he took the 50 percent.*” (Emphasis added). (PEx1, pp 19:8-10.)
- **Scope of business:** “his name is not in my corporation [but]. . . whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.” (PEx 1, p 23:19-25, p 24:1)
- **Form of Agreement (Oral):** “my partner, he never have it in writing from me.” (PEx 1, pp 23:19-25, 24:1, 4-5.)
- **Yusuf’s Contribution of the use of the corporation:** “But I want you please to be aware that my partner’s with me since 1984, and up to now **his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent.** And I know very well, my wife knows, my children knows, that **whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.** But due to my honesty . . . my partner, he never have it in writing from me.” (Emphasis added). (PEx 1, pp 23:18-25, 24:1, 4-5.)
- **Distinction between owning the supermarket operations and owning United:** Yusuf testified he owned “50 percent of Plaza Extra in 1986,” and made the specific distinction that at the same time he owned 100% of the “United Shopping Plaza.” (PEx 1, p 9: 1-2)

In short, since the existence of these specific key items are not disputed by Yusuf, all objective indicia of partnership remain undisputed.

Third, while Yusuf does not describe the terms of the oral agreement he thought he had with Hamed in his new affidavit, the pleadings in this case contain judicial admissions as to the terms of this business arrangement (emphasis added):

- Defendants’ Rule 12 Memorandum (p. 3) (DE 29) “In 1986, due to financial constraints, Defendant Yusuf and Plaintiff Hamed **entered into an oral joint venture agreement.** The agreement called for Plaintiff Hamed to receive fifty

percent (50%) of the net profits of the operations of the Plaza Extra supermarkets. . . . Plaintiff Hamed received 50% of the net profits thereafter."

- Defendants' December 13, 2012 Rule 12 Reply Memorandum (p. 11) "[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....**The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.**"
- Counsel's Rule 56(d) affidavit seeking additional time to respond to this motion (p. 2, ¶ 8) "However there is a fundamental dispute between the parties as to whether Mohammed Hamed is a *bona fide* partner or a mere joint venturer who has no partnership rights whatsoever under the Virgin Islands Uniform Partnership Act or any other authority."

Similarly, in another case filed by United in January, 2013 against Wally Hamed (after this Rule 56 motion was filed), United asserted in its complaint (PEx 4, ¶¶ 11, 14):

- 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....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 [USVI]; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix.⁴ (Emphasis added).

While these pleadings refer to the oral agreement as a joint venture where the profits are split 50/50, a joint venture is a form of partnership under VI law, as this Court noted in Conclusion ¶ 8 of its April 25th opinion. Thus, under the VI Supreme Court's holding in *Arlington*, *supra*, these pleadings create a judicial admission that prevents Yusuf's affidavit from creating an issue of fact on the partnership issue, even if subjective "intent" were relevant, which it is not.

Thus, while Fathi Yusuf now claims not to know what the term partnership meant in 1986, it is undisputed that the profits from the three Plaza Extra Supermarkets were to be shared 50/50. When considered along with the other indicia of the partnership

⁴ This admission demonstrates that without question United had full knowledge of, and was completely involved in the partnership's dealings with the corporation and the use of corporate resources from the very beginning—as this Court found.

that even Yusuf's "corrective affidavit" did not retract, it cannot be disputed that there is a partnership between Yusuf and Hamed. If it looks like a duck, walks like a duck and quacks like a duck, it is a duck. In short, there is a partnership under the undisputed facts and applicable law, regardless of Yusuf's intent.

VI. The Criminal Case

As noted by this Court in Finding of Fact ¶ 24, the Plaintiff was not a party to the criminal case. He was not indicted or even questioned. He did not appear and was not represented there. He never entered into or negotiated any plea or other agreement. Thus, the arguments as to what took place in the criminal case are not relevant to this action. Indeed, the Defendants have not identified any affirmative "representations" made by any of the individual criminal defendants in that case.

Moreover, the Government's position in the criminal case was that the Hameds clearly were more than employees of United, as the AUSA noted recently on July 16, 2013, before the District Court (attached as **Exhibit C**, at p 145:13-23)(emphasis added):

Now, the government's position in the criminal case was that the Hameds clearly had an interest in United because United was paying a lot of their personal expenses, and that was what led to some of the individual income tax charges. So they had to have some kind of relationship more than an employee, because United would not have been paying hundreds of thousands of dollars for them to build their house and do other things. So they were clearly in a separate category.

In any event, no such representations or "admissions" were made in the criminal proceedings (or in the PI hearings) as alleged, nor would they be binding on Hamed even if made since he was not a party to the criminal proceedings. In short, Defendants cannot create a material issue of fact based on the criminal proceedings.

VII. Plaintiff Relies on the UPA, Not on “Labels”

Defendants argue that summary judgment cannot be entered just because one party uses the label “partner” or “partnership.” However, Hamed is not relying “labels” to establish the partnership—the evidence supports a finding based on the UPA as codified in the VI Code—so this argument has no merit.

VIII. Management Rights/Control

Defendants argue that Hamed has never had any management rights regarding the Plaza Extra Supermarkets, allegedly negating the fact that he is a partner. While both Fathi Yusuf and Maher Yusuf submit conclusory “corrective affidavits” to this effect, these general averments are again insufficient to defeat summary judgment.

Indeed, there is no requirement that a partner equally or (or even actively) co-manage a business *on a day-to-day basis* where profits are being shared. See the Court's discussion of *Al-Yassin v. Al-Yassin*, 2004 WL 625757, *7 (Cal.Ct.App.2004) in PI Opinion.

Conclusion ¶ 12 (emphasis added) (“Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself.”)

Moreover, as this Court expressly noted in Finding ¶ 19 its April 25th opinion, Hamed had jointly managed the partnership stores, initially with Hamed in charge of the warehouse and produce while Yusuf was in charge of the office and later with Hamed's and Yusuf's sons doing much of the day-to-day work as their fathers' representatives. This finding was based on Hamed's direct testimony as well as that of all of the sons. In ¶ 20 of its findings, this Court further noted how this joint management had continued through the years with one Yusuf son and one Hamed son being jointly in charge of

each of the three stores. **Every Hamed and Yusuf witness agreed this was true.** See 1/25 Tr, pp 33:6-35:11; 147:11-20; 160:10-22 and 1/31 Tr. p 33:6-17. Thus, this evidence also remains undisputed, as neither Yusuf affidavit refutes this specific testimony.

Thus, at best, the Yusufs' affidavits confirm that Hamed had no involvement in the "office" aspect of the three stores. Indeed, in trying to downplay Hamed's role, Defendants **misquote** Hamed's testimony to try to argue that Yusuf was the sole person in charge "of" everyone. While Defendants claim Hamed testified that Yusuf "is in charge of everybody," he actually testified that Yusuf was "in charge for everybody."⁵ (1/25 Tr, p. 201:4.) The misquote *significantly* changes the meaning of that statement, as his actual testimony is consistent with this Court's finding in ¶ 19, stating:

Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. Yusuf's management and control of the "office" was such that Hamed was completely removed from the financial aspects of the business (Emphasis added).

In short, the statement that Yusuf was in charge "for everybody" (not "of" everybody) does not mean Hamed was not an equal partner or gave up his authority to jointly manage the store operations. As this Court held in Conclusions ¶¶ 12 and 14:

12. Where, as here, the parties agree that one partner is designated to take charge of "the office" and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a

⁵ The Defendants made this same error in both their appellate brief and their appellate motion to stay, which Hamed pointed out to that court in his various reply filings. Thus, it is incredible that the Defendants would **submit this same misquote again** after being corrected on the record in the V.I. Supreme Court.

business than another partner does not defeat the existence of the partnership itself. *Al-Yassin v. Al-Yassin*, 2004 WL 625757, *7 (Cal. Ct. App. 2004). . . .

. . . .
14. . . . By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

Defendants have not offered any evidence to refute the specific facts that support these findings, as the conclusory affidavits that were submitted did not address this testimony at the PI hearing. Thus, the facts that establish that Hamed did jointly manage the partnership businesses remain undisputed.

IX. “Objective Evidence to Third Parties”

Defendants argue that the rest of the world did not know about this partnership, so somehow it must not exist. Of course, Defendants ignore the many sworn statements of Yusuf in the *Idheileh* case, including the ones where he said, “[e]very single Arab in the Virgin Islands knew that Mr. Mohammed Hamed is my partner, way before Plaza Extra was opened.” PEx 1, p 20:10-12.

Ignoring these admissions, Defendants argue that because Yusuf used the corporate form of United to conduct some of the partnership’s business, there is no partnership. Again, Defendants forget the sworn statements of Fathi Yusuf that explained why the use of the corporate form did not mean there was no partnership, as he testified as follows in the *Idheileh* case.

But I want you please to be aware that my partner’s with me since 1984, and up to now his name is not in my corporation. . . . And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner. PEx1, pp 23:18 to 24:5

When Yusuf’s own attorney (also representing United which was a co-defendant) then questioned Yusuf the about Hamed’s 50% interest in the Plaza Supermarket stores,

even though they were often referred to as United Corporation Plaza Supermarket, Yusuf responded (PEx1, p. 69:13-21) (emphasis added):

Q. Okay. Okay. You were asked by Attorney Adams, when it says United Corporation in this [other, unrelated] Joint Venture Agreement, **in talking about Plaza Extra, talking about the supermarket** on St. Thomas, who owned or who was partners in United Corporation **Plaza Extra** at the time before you entered into that Joint Venture Agreement?

A. **It's always, since 1984, Mohammed Hamed.**

Q. Okay. So when it says United Corporation –

A. **It's really meant me and Mr. Mohammed Hamed.**

This Court heard this same evidence at the PI hearing and held in Conclusion ¶ 11 of its April 25th opinion as follows:

11. Defendants argue that Defendant United has owned and operated the businesses known as Plaza Extra, and that Hamed's claims must fail because he concedes that he has no ownership interest in United. To the contrary, the record clearly reflects that Yusufs use of the Plaza Extra trade name registered to United, the use bank accounts in United's name to handle the finances of the three supermarkets and other participation of the corporate entity in the operation of the stores was all set up in the context of Yusefs partnership with Hamed, as Yusuf has consistently admitted. The existence of a partnership is not negated by the use of the corporate form to conduct various operations of the partnership. *McDonald v. McDonald*, 192 N.W. 2d 903, 908 (Wis. 1972). . . .

Indeed, as this Court further noted in part in Conclusion ¶ 12:

12. Where, as here, the parties agree that one partner is designated to take charge of "the office" and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. . . .

Thus, this Court has already addressed this issue and explained why it is insufficient to defeat the existence of the partnership.

Similarly, the 2012-2013 rent notices sent by United to Hamed as *the head of Plaza Extra* confirms it knows Plaza Extra is a different entity even if no one else knows. Indeed, Maher Yusuf, United's President, explained in an affidavit filed in this case (PEx 2, Exhibit B, p 3) how the net profits from the partnership were calculated:

17. Most importantly, United has always charged rent for the use of part of its retail premises **by the Plaza Extra Supermarket operation** on Sion Farm, St. Croix. **Mohammed Hamed** has always understood that United would charge for the use of its retail space, **and would deduct the value of such rent in arriving at the net profits of the Plaza Extra Supermarkets.** (Emphasis added.)

In fact, United keeps a separate bank account from Plaza Extra to deposits such rents, which was specifically exempted at United's request from this Court's PI Order otherwise preventing unilateral withdrawals from the partnership account. See **Exhibit D.** Thus, United cannot create an issue of fact about what third parties may have known when it knew Plaza Extra was a different legal entity.

Defendants' also suggest that a partnership *has* to register with the Lt. Governor's Office. However, a partnership is not required to be registered, even though it may do so pursuant to 5 V.I.C. § 6(a). In short, "being known" to the Lt. Governor's Office is not a requirement to be a partnership.

Defendants also suggest that Hamed's partnership interest is "unknown" to the IRB because he allegedly did not file tax returns attaching K-1's showing his partnership income. However, Mohammad Hamed met with the IRB and fully explained his interest. See ¶ 27-28 of **Exhibit E.** He has also filed tax returns reporting his partnership income, attaching K-1's as required, which taxes the IRB has deemed to be paid in full. See ¶ 33-35 of **Exhibit E.**⁶ Thus, Hamed's interest in the Plaza Extra partnership is known to the IRB, even though this is not a UPA requirement to be a partnership either.

In summary, even if one partner is conducting the business using elements of a corporation, that by itself is not sufficient to create a genuine issue of fact regarding the existence of the partnership. Indeed, United Corporation **regularly** sends rent notices to Plaza Extra, so it knows it is a separate entity. Thus, at best, the use of the corporate

⁶ If this Court wants to see the returns with the K-1's attached, they can be submitted.

form shows that the partner in charge of the office, Fathi Yusuf, failed to file the proper partnership documentation, not that there is disputed fact as to the existence of the partnership.

X. Partnership Distributions

Defendants argue that no partnership profit distributions have ever been made to Mr. Hamed, so there is no partnership. However, Defendants have admitted in their pleadings in this case that Hamed is entitled to 50% of the profits.⁷ Likewise, they admit in their responses to discovery in this case that the profits from the store were *actually split 50/50*, noting as follows (**Exhibit F**):

12. Please describe the method used to keep track of all funds withdrawn by any member of the Yusuf or Hamed families from the funds generated by the sales from the three Plaza Extra Supermarkets (other than regular salaries paid by a paycheck) so that these withdrawals could be accounted for.

Answer to Interrogatory No. 12: Hand written receipts were to be made by any family member taking funds

13. Please describe how the withdrawals of funds mentioned in the preceding interrogatory would be adjusted between the Yusuf and Hamed families.

Answer to Interrogatory No. 13: Subject to full accounting, the total funds withdrawn were to be adjusted equally based on amounts taken by each family or family member.

Indeed, this Court heard the undisputed testimony at the preliminary injunction on these extensive distributions of profits (1/25 Tr, pp 39-42) and found in Conclusion of Law ¶13 that Hamed and Yusuf had shared profits from the Plaza Extra Supermarket operations

⁷ Defendants' Rule 12 Memorandum (DE 29) (p. 3) (emphasis added): "In 1986, due to financial constraints, Defendant Yusuf and Plaintiff Hamed entered into an oral joint venture agreement. The agreement called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets. . . . Plaintiff Hamed received 50% of the net profits thereafter."

since the opening of the first store. As such, this argument is absurd and does not defeat summary judgment.

XI. Rent Notices

Finally, Defendants argue that the rent notices sent by United to Hamed are not evidence that a partnership existed because United's in-house accountant, John Gaffney, testified at the PI hearing that this "could be" just "an inter-company accounting entry" that would just be a "wash" to United. If this were true, why would United file a separate motion based on the partnership, asking this Court to allow it to remove these funds from the Plaza Extra Supermarket's operating accounts? Similarly, why would it ask this Court to remove its "tenant" bank account from the PI Order? Defendants' inconsistent positions in this case border on contempt.

In any event, this Court found in ¶ 23 of its April 25th findings that United has sent rent notices to "Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged." Notwithstanding this finding, United continued to send rent notices to Hamed after this finding. Moreover, United has also submitted an affidavit of Fathi Yusuf in support of its September 9th "rent motion" stating that **rent is due and owing from Plaza Extra**. Thus, these rent notices (and the payment of rent) are not mere accounting entries, as they are evidence further supporting the finding that a partnership exists.

XII. Conclusion

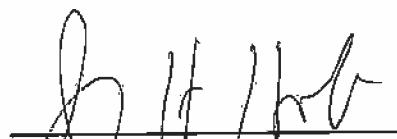
While Defendants argue that there is a genuine question of fact as to the existence of the partnership, they admit all of the UPA requisites while failing to create a genuine issue of fact to support their own contentions.

Reply Re Partial Summary Judgment

Moreover, under 26 V.I.C. § 71 (a) and (f), Plaintiff is entitled to a finding that (1) he is entitled to 50% of the profits and (2) the right to fully participate in the management the three Plaza Extra stores once a partnership is found to exist, which points were not contested by either Defendant.

Thus, for the reasons set forth in Plaintiff's initial motion as well as set forth herein, it is respectfully submitted that Plaintiff's motion for partial summary judgment should be granted.

Dated: September 26, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820

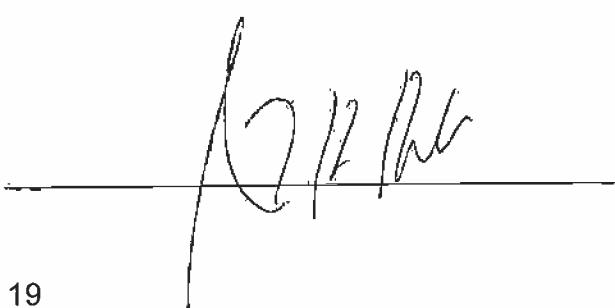
CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2013, a true and accurate copy of the foregoing was served by hand on:

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

And by mail and email on:

Joseph A. DiRuzzo, III
Christopher David, Esq.
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131



UNITED CORPORATION
4C & 4D Sion Farm
St Croix, USVI 00821
Phone (340) 778-6240

May 4, 2012

Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of May 1, 2012

Rent due for Plaza Extra – East, January 1, 2012 through April 1, 2012	Balance Due	\$850,000.00
ADD: 1% interest on outstanding Balance		\$ 8,500.00
	Amount Due	\$858,500.00
May 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due May 1, 2012	<u>\$1,108,500.00</u>

Please forward a check immediately.

Sincerely,



Najeh Yusuf for Fathi Yusuf

CC: Wally Hamed



**UNITED CORPORATION
4C & 4D Sion Farm
St. Croix, USVI 00821
Phone (340) 778-6240**

June 1, 2013

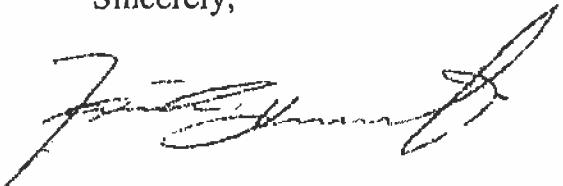
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of June 1, 2013

Rent due for Plaza Extra – East		
January 1, 2012 through May 31, 2013	Balance Due	\$4,419,711.31
1% interest on outstanding Balance		\$ <u>44,197.11</u>
	Amount Due	\$4,463,908.42
June 2013 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due June 1, 2013	<u>\$4,713,908.42</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

**UNITED CORPORATION
4C & 4D Sion Farm
St. Croix, USVI 00821
Phone (340) 778-6240**

July 1, 2013

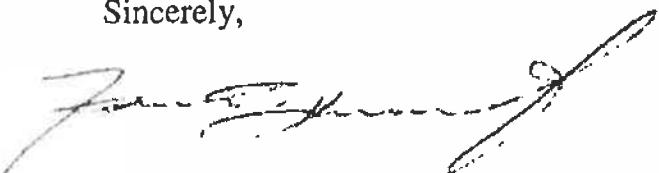
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of July 1, 2013

Rent due for Plaza Extra – East January 1, 2012 through June 30, 2013	Balance Due	\$4,713,908.42
1% interest on outstanding Balance	Amount Due	\$ 47,139.08 \$4,761,047.50
July 2013 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due July 1, 2013	<u>\$5,011,047.50</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

**UNITED CORPORATION
4C & 4D Sion Farm
St. Croix, USVI 00821
Phone (340) 778-6240**

August 1, 2013

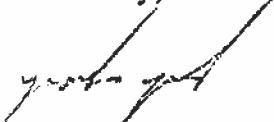
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of August 1, 2013

Rent due for Plaza Extra – East January 1, 2012 through July 31, 2013	Balance Due	\$5,011,047.50
1% interest on outstanding Balance		\$ 50,110.48
	Amount Due	\$5,061,157.98
August 2013 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due August 1, 2013	<u>\$5,311,157.98</u>

Please forward a check immediately.

Sincerely,



Maher Yusuf

**UNITED CORPORATION
4C & 4D Sion Farm
St. Croix, USVI 00821
Phone (340) 778-6240**

August 1, 2013

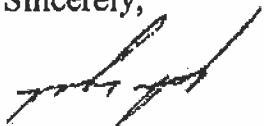
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of September 1, 2013

Rent due for Plaza Extra – East January 1, 2012 through August 31, 2013	Balance Due	\$5,311,157.98
1% interest on outstanding Balance	Amount Due	\$ 53,111.58 \$5,364,269.56
September 2013 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due September 1, 2013	<u>\$5,614,269.56</u>

Please forward a check immediately.

Sincerely,



Maher Yusuf

UNIFORM PARTNERSHIP ACT (1997)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIFTH YEAR
SAN ANTONIO, TEXAS
JULY 12 - JULY 19, 1996

WITH PREFATORY NOTE AND COMMENTS

COPYRIGHT© 1994, 1996, 1997
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Approved by the American Bar Association
San Antonio, Texas, February 4, 1997

2/27/98



SECTION 202. FORMATION OF PARTNERSHIP.

(a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

* * * *

Comment

1. Section 202 combines UPA Sections 6 and 7. The traditional UPA Section 6(1) “definition” of a partnership is recast as an operative rule of law. No substantive change in the law is intended. The UPA “definition” has always been understood as an operative rule, as well as a definition. The addition of the phrase, “whether or not the persons intend to form a partnership,” merely codifies the universal judicial construction of UPA Section 6(1) that a partnership is created by the association of persons whose intent is to carry on as co-owners a business for profit, regardless of their subjective intention to be “partners.” Indeed, they may inadvertently create a partnership despite their expressed subjective intention not to do so. The new language alerts readers to this possibility.

1

2 IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

3 DIVISION OF ST. CROIX

4 UNITED STATES OF AMERICA, and

5 GOVERNMENT OF THE VIRGIN ISLANDS,

6 Plaintiffs,

7 v.

8 FATHI YUSUF MOHAMAD YUSUF,

9 aka Fahti Yusuf

10 WALEED MOHAMMAD HAMED,

11 aka Wally Hamed

12 WAHEED MOHOMMAD HAMED,

13 aka Willie Hamed

14 MAHER FATHI YUSUF,

15 aka Mike Yusuf

16 NEJEH FATHI YUSUF, ISAM YUSUF, and

17 UNITED CORPORATION,

18 dba Plaza Extra,

19 Defendants.

20 Criminal No. 2005-15

21 July 16, 2013

22 3:20 p.m.

23 TRANSCRIPT OF SENTENCING

24 BEFORE THE HONORABLE DISTRICT JUDGE

25 WILMA A. LEWIS



1 proceeding in the District Court? Is that the
2 complete reason as to why this Court should
3 basically not be concerned about the order
4 entered by the Superior Court?

5 MS. HENDRICKSON: I think that's one
6 reason. But I think there is a few.

7 THE COURT: Okay.

8 MS. HENDRICKSON: One, in February of
9 2010, there is no issue about who owned United.
10 Now, there may have been some lawsuits and some
11 other things about who owned it and whether it
12 was a partnership.

13 Now, the government's position in the
14 criminal case was that the Hameds clearly had
15 an interest in United because United was paying
16 a lot of their personal expenses, and that was
17 what led to some of the individual income tax
18 charges. So they had to have some kind of
19 relationship more than an employee, because
20 United would not have been paying hundreds of
21 thousands of dollars for them to build their
22 house and do other things. So they were
23 clearly in a separate category.

24 Now, in the government's opinion, it
25 didn't matter for purposes of the criminal case

1 whether Mohammad Hamed had partnership with
2 Fahti Yusuf or Waheed or Waleed Hamed.
3 Government's focus was on United Corporation,
4 unreported income of United Corporation and
5 unreported income of individual defendants.

6 That was our focus when the case was indicted.]

7 In February of 2010, the issue again was
8 let's make sure all the income gets reported
9 and taxes get paid. Regardless of, I mean,
10 there wasn't an issue about whether there was a
11 partnership or corporation that had ever come
12 up in the criminal case.

13 Then in February of 2011, we have
14 additional mediation and we negotiate. Civil
15 litigation wasn't anticipated. The issue about
16 whether it was a partnership or a corporation
17 was not an issue, as far as the criminal case
18 went.

19 Then, of course, once the civil lawsuit
20 was filed, it became an issue. But the
21 government's position regarding how this Court
22 should interpret Judge Brady's order is that
23 from July 15, 2013, when he entered this order,
24 going forward, then, his order applies to how
25 Plaza Extra stores are run and whether checks

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

<u>MOHAMMED HAMED, by his authorized agent WALEED HAMED,</u>	<u>Plaintiff</u>	CASE NO.	<u>SX-12-CV-370</u>
Vs.		ACTION FOR: <u>DAMAGES; PRELIMINARY AND PERMANENT INJUNCTION; DECLARATORY RELIEF</u>	
<u>FATHI YUSUF and UNITED CORPORATION</u>	<u>Defendant</u>		

**NOTICE
OF
ENTRY OF JUDGMENT/ORDER**

TO: JOEL H. HOLT; CARL J. HARTMANN III Esquire BANK OF NOVA SCOTIA

NIZAR A. DEWOOD; JOSEPH A. DIRUZZO III Esquire

Esquire

Please take notice that on MAY 7, 2013 _____ Order was entered by this Court in the above-entitled matter.

Dated: May 8, 2013 _____

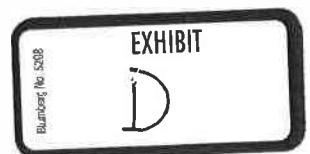
VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Superior Court



By: IRIS D. CINTRON _____

COURT CLERK II



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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
Plaintiff,) CIVIL NO. SX-12-CV-370
v.) ACTION FOR DAMAGES;
FATHI YUSUF and UNITED CORPORATON,) JURY TRIAL DEMANDED
Defendants.)

ORDER

THIS MATTER is before the Court on Defendant's Motion to Clarify the Court's Preliminary Injunction Order entered on April 25, 2013. Defendant's Motion is unopposed by Plaintiff; moreover, the parties have stipulated to the same. Thus, being fully advised in the premises it is specifically

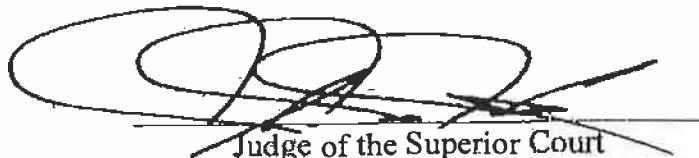
ORDERED that Defendants' Motion is GRANTED.

ORDERED that Defendant United's Tenant Account No. 9xxx1923 is NOT subject to this Court's Preliminary Injunction Order, entered on April 25, 2013.

ORDERED that no signature shall be required from Plaintiff Hamed (or his authorized agent) for disbursement of any funds from Defendant United's Tenant Account No. 9xxx1923, only.

ORDERED that this Order be served on all parties FORTHWITH, and the Bank of Nova Scotia.

Dated: *May 7, 2013*



Judge of the Superior Court

ATTEST: VENETIA H. VELASQUEZ
Clerk of the Court
By: *[Signature]*
Chief Deputy Clerk

5/8/13

CERTIFIED TO BE A TRUE COPY
This 8th day of May 2013
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By [Signature] Court Clerk

IN THE SUPREME COURT OF THE VIRGIN ISLANDS



FATHI YUSUF AND UNITED
CORPORATION,

Appellants/Defendants,
v.

MOHAMMAD HAMED By His
Authorized Agent WALEED HAMED,

Appellee/Plaintiff.

S. Ct. Civ. No. 2013-CV-0040

Re. Super. Ct. Civ. No. 2012/370

DECLARATION OF WALEED HAMED

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein as a manager of the Plaza Extra Supermarkets and in my capacity acting as my father's representative under a power of attorney in the Plaza Extra operations, which I deal with on a day-to-day basis.
2. Since I first began to work in the late 1980's in the Plaza Extra Supermarket at Sion Farm, St. Croix, it was always understood that Plaza Extra was a partnership between my father, Mohammad and Fathi Yusuf.
3. It was also understood that United Corporation owned the shopping center at Sion Farm, which was solely owned by Yusuf and his family, as my father had no interest in that corporation. United Corporation was the landlord for the Plaza Extra Supermarket at Sion Farm. United charges Plaza Extra rent for the space used by the supermarket.
4. When Plaza Extra expanded to St. Thomas in the early 1990's and then to the west end of St. Croix in the early 2000's, these stores were also part of the partnership.
5. The three Plaza Extra Supermarkets have always been jointly managed by Yusuf and Hamed, eventually with one member from each family acting as a co-manager for each of the three stores. This joint management has been critical to the success of these three stores

EXHIBIT

E

6. This joint management has been very successful, as evidenced by the fact that the stores generated over \$43,000,000 in net profits (after estimated taxes and all expenses) between 2003 and 2010, which was escrowed with Banco Popular Securities under an order entered in the criminal proceedings pending in the District Court.
7. Indeed, the three stores now employ approximately 600 people and service both St. Croix and St. Thomas.
8. A criminal case for tax fraud was filed in the District Court of the Virgin Islands in 2003 against United Corporation and several members of the Yusuf and Hamed families, including myself and Fathi Yusuf. My father, Mohammad Hamed, was not charged (and never has been charged).
9. Prior to the filing of the criminal case, all profits from the three Plaza Extra Supermarkets had been distributed equally between my father and Fathi Yusuf. As I testified at the hearing in this matter, they had primarily used the funds to buy properties throughout the Virgin Islands, placing the properties in the names of various corporations that were owned 50/50 by the Hamed and Yusuf families.
10. As I already noted, after the criminal case was filed, the net profits of the three Plaza Extra Supermarkets have been escrowed and still have not been distributed.
11. After a plea agreement was reached in the criminal case in 2010, the charges against the individual defendants were dismissed, but United Corporation pled guilty and is still awaiting sentencing. In this regard, United Corporation was required to do several things before sentencing, including the filing of true and accurate tax returns for the time period between 2002 and 2010, as no returns were filed while the criminal charges were pending, although estimated tax payments were made quarterly.
12. After the plea, the three Plaza Extra Supermarkets continued to operate as before, with one member of each family acting as a co-manager in each store.
13. In early 2012, Fathi Yusuf had his lawyer contact me pursuant to the power of attorney I have for my father, who informed me that Fathi Yusuf wanted to break up the partnership.
14. Discussions then followed as to what to do with the three Plaza Extra Supermarkets.

15. In June of 2012, when negotiations broke down, Fathi Yusuf's lawyer sent a letter taking over the partnership -- threatening to fire all of the Hameds.
16. By that time, tensions had developed between the Hamed and Yusuf families, which began to severely affect the day-to-day management of the three Plaza Extra Supermarkets.
17. In August of 2012 Yusuf unilaterally removed \$2.7 million from the supermarket account, something that had never been done in the past, absent the mutual consent of the two partners. Yusuf was specifically told that this should not be done and a demand was made to return them after they were removed. When the funds were not returned, this litigation was filed.
18. As noted by the court in its findings, tensions continued in the day-to-day management of the Plaza Extra Supermarkets resulting in (1) the police being called by Yusuf to the store, (2) repeated threats by Yusuf to remove all Hamed family members, (3) attempts by Yusuf to fire key managerial employees and (4) repeated statements by Yusuf that he would close the stores.
19. This tension had a direct negative effect on the day-to-day management of the business
20. However, now that the preliminary injunction has been issued, the business operations of the three Plaza Extra Supermarkets have been able to operate without threats and intimidation by Fathi Yusuf, which was occurring on almost a daily basis before the preliminary injunction was issued.
21. Thus, if the preliminary injunction is stayed, chaos will return to the Plaza Extra Supermarkets which would harm my father's interest in the three Plaza Extra Supermarkets.
22. As discussed, one open issue in the criminal case involves the filing of true and accurate tax returns by United Corporation and payment of taxes not covered by the estimated taxes that were paid during this time period.
23. United Corporation has insisted on filing tax returns for this time period claiming 100% of the profits of the Plaza Extra Supermarkets, even though it has repeatedly acknowledged here that 50% of these profits belong to my father, Mohammad Hamed.
24. As the plea agreement contemplated clearing up these tax issues, I became quite concerned about this process, as my father had not filed his taxes since 1997 (although taxes on his share of the Plaza Extra profits

had been paid), which I had presumed would be cleared up as part of the tax filings still due in the criminal case.

25. In this regard, an opportunity was provided to clear up all of its tax issues from the beginning of Plaza Extra's existence as part of the plea agreement, including interest and penalties. For example, a lump sum payment of \$10,000,000 was made in 2011 to satisfy all tax obligations occurring before 2002 for the three Plaza Extra stores.
26. It was subsequently calculated that \$6.5 million in taxes was still due for the time period between 2002 and 2010, even though estimated taxes has been paid quarterly.
27. As my father had not filed tax returns since 1997 and it was becoming clear that United Corporation might not include him in satisfying the tax obligations owed on the profits from the three Plaza Extra Supermarkets, my father filed all of his tax returns for the time period from 1997 to 2011 on May 16, 2013, as part of the IRB's amnesty program known as "Operation Last Chance." He reported 50% of the profits from the Plaza Extra partnership as his income. He also reported to the IRB that the taxes due on this income had been paid in full by prior payments made by Plaza Extra from the partnership accounts held by United Corporation, including the \$10,000,000 payment for additional taxes owed on the profits of the Plaza Extra Supermarket prior to 2002. Finally, he pointed out that significant taxes were still due on the income reported for the time period between 2002 and 2010, which was in the process of being paid as part of the closure of the criminal case.
28. My father also submitted documents to the IRB demonstrating that the three Plaza Extra Supermarkets were operated by a partnership (including all of the admissions submitted to the court in this case) and not by a corporation, even though United Corporation was now claiming 100% of the profits on its tax returns for this same time period.
29. On June 19, 2013, as part of the closure of the criminal case, a check for approximately \$6.5 million was submitted to the IRB for taxes owed primarily on the profits of the Plaza Extra Supermarkets.
30. While I did not know it at the time, I have since learned that these funds were removed from the escrowed profits at Banco Popular Securities at the request of the lawyer for the defendants in this case, as per the attached letter.
31. As the escrowed profits belong equally to my father, I was upset that they would be removed without his knowledge or consent, although we had all

agreed these funds would be used for the taxes owed on the profits made by the Plaza Extra Supermarket for the 2002 to 2010 time period.

32. As such, my father agreed to ratify the withdrawal of these funds so long as they were used to pay taxes due on the profits of the three Plaza Extra Supermarkets -- both those of Yusuf and those of Hamed.
33. The IRB accepted these funds as payment of taxes due from the profits of the Plaza Extra Supermarkets, including taxes owed by Yusuf and his family members -- and my father on these profits.
34. The IRB has now confirmed that all income taxes owed by my father for this time period have been paid in full, as per the attached letter.
35. The IRB sent a similar letter for the time period between 1997 and 2002, which is also attached.
36. Thus, the assertions that my father is a "criminal tax evader or non-filer" are untrue.
37. As for the characterization that my father is a "criminal tax evader" and its insistence on filing tax returns claiming 100% of Plaza Extra's profits (despite its repeated admissions that 50% of these profits belong to Hamed), it is clear that United (with Yusuf's help) intends to remove all of these remaining escrowed profits (now reduced to \$37,000,000 by its unannounced withdrawal of the \$6.5 million) and claim them as its own once the District Court restraining order is lifted.
38. Thus, if the preliminary injunction is stayed, I am also fearful that more funds will be diverted and that my father will not be able to recover these funds, as Yusuf and United have already removed funds out of the Virgin Islands.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 27, 2013



Waleed Hamed a/k/a Wally Hamed



U.S. Department of Justice

United States Marshals Service

Asset Forfeiture Division

Alexandria, VA 22301-1025

June 14, 2013

Joseph DiRuzzo
Fuerst Littleman David and Joseph PL.
1001 Brickell Bay Dr
32nd Floor
Miami, FL 33131

Dear Mr. DiRuzzo:

Per your letter dated May 24, 2013, the United States Marshals Service authorizes you to request the release of \$6,586,132 from the Banco Popular Securities account so that payment of taxes due to the Virgin Islands may be remitted.

If you have any questions please feel free to contact me at Maggie.Doherty@usdoj.gov and by phone at (202) 353.8333.

Sincerely,

Maggie Doherty
Case Manager
Complex Assets Unit
Asset Forfeiture Division



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
—0—
VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE



6115 Estate Smith Bay - Suite 225
St. Thomas VI 00802
Phone: (340) 715-1040
Fax: (340) 774-2672

4008 Estate Diamond Plot 7B
Christiansted VI 00820-4421
Phone: (340) 773-1040
Fax: (340) 773-1006

June 20, 2013

**Mohammad & Khiereih Hamed
P. O. 2926
Frederiksted, Virgin Islands 00841-2926**

Dear Mr. & Mrs. Hamed:

As Director of the Virgin Islands Bureau of Internal Revenue, I have received payment in full for income taxes for tax years 2002 through 2010.

Sincerely,

Claudette Watson-Anderson, CPA
Director



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE



6115 Estate Smith Bay - Suite 225
St. Thomas VI 00802
Phone: (340) 715-1040
Fax: (340) 774-2672

4008 Estate Diamond Plot 7B
Christiansted VI 00820-4421
Phone: (340) 773-1040
Fax: (340) 773-1006

June 20, 2013

**Mohammad & Khiereih Hamed
P. O. 2926
Frederiksted, Virgin Islands 00841-2926**

Dear Mr. & Mrs. Hamed:

As Director of the Virgin Islands Bureau of Internal Revenue, I have received payment in full for income taxes for tax years 1997 through 2001.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudette Watson-Anderson".

Claudette Watson-Anderson, CPA
Director

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

MOHAMMAD HAMED, by his authorized agent WALEED HAMED,)	
)	CIVIL NO. SX-12-CV-370
Plaintiff,)	
)	ACTION FOR DAMAGES, INJUNCTIVE AND DECLARATORY RELIEF
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants.)	JURY TRIAL DEMANDED
)	

**DEFENDANT UNITED CORPORATION'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

COMES NOW, Defendant United Corporation, (hereinafter referred to as "United" or "Defendant"), by and through undersigned counsel, The DeWood Law Firm, by Nizar A. DeWood, Esq., and respectfully answers as follows to the Plaintiff's First Set of Interrogatories to Defendant, United Corporation.

Subject to the objections set forth below, Defendant answers as follows to the First Set of Interrogatories filed by Plaintiff.

PRELIMINARY STATEMENT

These answers and objections are made solely for the purpose of this action. Each answer is subject to any and all objections as to competence, relevance, materiality, propriety, and admissibility; and any and all objections and grounds that would require the exclusion of any statement contained in any response, if such request were asked of, or any statement contained therein were made by, a witness present and testifying in court, all of which objections and grounds are hereby reserved and may be interposed at the time of trial.

The following answers are based upon information presently available to Defendant and, except for explicit facts admitted herein, no incidental or implied admissions are intended

EXHIBIT

F

12. Please describe the method used to keep track of all funds withdrawn by any member of the Yusuf or Hamed families from the funds generated by the sales from the three Plaza Extra Supermarkets (other than regular salaries paid by a paycheck) so that these withdrawals could be accounted for.

Answer to Interrogatory No. 12:

Hand written receipts were to be made by any family member taking funds.

13. Please describe how the withdrawals of funds mentioned in the preceding interrogatory would be adjusted between the Yusuf and Hamed families?

Answer to Interrogatory No. 13:

Subject to full accounting, the total funds withdrawn were to be adjusted equally based on amounts taken by each family or family member.

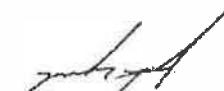
VERIFICATION

On this, the 19 day of September 2013, before me personally appeared **Maher Yusuf**, acting in his capacity as President for United Corporation, and on behalf of United Corporation, after being first duly sworn, states under oath that the foregoing Answers to Interrogatories, directed to said Corporation are true and correct to the best of his knowledge and belief, and that he executed same for an on behalf of United Corporation.

This, the 19th day of September 2013.

UNITED CORPORATION

By:

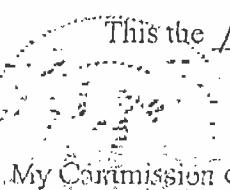


Maher Yusuf, President

TERRITORY OF U.S. VIRGIN ISLANDS
DISTRICT OF ST. CROIX

On this the 19th day of September 2013, before me personally appeared **Maher Yusuf**, acting in his capacity as President of United Corporation and on behalf of United Corporation, executed the foregoing Verification.

This the 19th day of September 2013.


K. Glenda Cameron _____ Notary Public
Commission Number LNP 010-0945
Expiration Date: May 26, 2017
My Commission expires: _____ 