

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FATHI YUSUF,)	
)	S. CT. CIV. NO. 2015-
v.)	Re: Super. Ct. Civ. No. SX-12-CV-370
)	
MOHAMMAD HAMED, WALEED)	
HAMED, WAHEED HAMED, MUFEED)	
HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
Appellees.)	
)	

NOTICE OF APPEAL

Notice is hereby given that Fathi Yusuf (“Yusuf”),¹ defendant in the above-referenced Superior Court action, pursuant to V.I. Code Ann. tit. 4, § 33(b)(1) and (2), appeals the following Orders of the Superior Court: 1) the July 22, 2014 Opinion and Order² denying Yusuf’s Motion To Nullify Plessen Enterprises, Inc.’s Board Resolutions, To Void Acts Taken Pursuant To Those Resolutions, And To Appoint Receiver filed on May 20, 2014 (“Motion To Nullify”); and (2) the December 5, 2014 Opinion and Order denying Yusuf’s Motion For Reconsideration filed on August 6, 2014.

The issues to be presented on appeal include the following:

- (1) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it denied the Motion To Nullify, which sought to void or effectively enjoin all resolutions purportedly adopted on April 30, 2014 by the Board of

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¹ Pursuant to VISCR 4(c), the physical address and telephone number of Yusuf is care of the undersigned.
² *Hamed v. Yusuf*, 2014 V.I. LEXIS 52 (V.I. Super.Ct. July 22, 2014).

Directors³ of Plessen Enterprises, Inc. (“Plessen”), the stock of which is owned 50% by members of the Hamed family and 50% by members of Yusuf’s family, the actions⁴ taken pursuant to those resolutions, and also sought the appointment of a receiver for Plessen;

- (2) Whether the Superior Court erred in concluding that Mohammad Hamed (“Hamed”) met his burden of proving the intrinsic fairness to both Plessen and the Yusuf shareholders of the long-term lease given by resolution of the Hamed-controlled Board of Directors to the start up company owned by Hamed’s sons;
- (3) Whether the Superior Court erred in approving a lease that unfairly provided Hamed with the “lynchpin” to his partnership liquidation plan, which competes with Yusuf’s plan, and fails to maximize the value of all partnership assets, particularly, the building and improvements constructed with partnership funds comprising the Plaza Extra-West supermarket;
- (4) Whether the Superior Court erred in refusing to appoint a receiver for Plessen despite its recognition of the “persistent deadlock”⁵ and the admittedly unauthorized taking of \$460,000.00 of Plessen’s funds by Waleed and Mufeed Hamed, later ratified as a “dividend” by resolution of the Hamed-controlled Board of Directors; and
- (5) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it denied the Motion For Reconsideration.

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³ Although the composition of the Board of Directors was disputed by the parties, the Superior Court found, without conducting an evidentiary hearing, that “for the limited purpose of addressing this Motion ... Plessen has three directors: Mohammad Hamed, Waleed Hamed, and Fathi Yusuf.” *Id.* at *2-3 n.2.

⁴ One of those disputed actions, a 30- year lease, approved by the two Hamed Directors of Plessen, to a company formed by Waleed Hamed and Mufeed Hamed on April 22, 2014, eight days before Plessen signed the lease, was described by the Superior Court as the “lynchpin” of Plaintiff’s plan for winding up the Hamed-Yusuf partnership....” *Id.* at *12.

⁵ *Id.* at *22.

Respectfully Submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 5, 2015

By: /s/ Gregory H. Hodges
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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2015, I caused the foregoing **NOTICE OF APPEAL** to be electronically filed with the Clerk of the Court using the V.I. Supreme Court e-filing system, and I caused a copy of same to be mailed to the following attorneys for the Plaintiff/Appellee and Counterclaim Defendants/Appellees, via first class mail and email at the physical and email addresses shown below:

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I further certify that on January 5, 2015, a copy of the foregoing **NOTICE OF APPEAL** was mailed to:

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Judge of the Superior Court of the Virgin Islands
Division of St. Croix
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/s/ Gregory H. Hodges

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