

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

MOHAMMAD HAMED, by his)
authorized agent WALEED HAMED,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.)
)
FATHI YUSUF and)
UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED)
HAMED, MUFEED HAMED,)
HISHAM HAMED,)
and PLESSEN ENTERPRISES, INC.,)
)
Counterclaim Defendants.)
_____)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

MOTION AND MEMORANDUM FOR RELEASE OF PI BOND

On February 27, 2015, the V.I. Supreme Court dismissed Yusuf's most recent appeal, *Yusuf v Hamed*, 2015 WL 877879 (V.I. 2015), stating in part:

In his opposition, Yusuf argues that the "Final Wind Up Plan" modified the earlier preliminary injunction in this case, which had "require[ed] the Yusuf and Hamed families to maintain joint management of the stores and require[ed] that any distribution of funds from Plaza Extra accounts be approved by a representative for both Yusuf and Hamed." *Yusuf v. Hamed*, 59 V.I. 841, 846 (V.I. 2013). However, the clear purpose of that preliminary injunction was to maintain the status quo until the Superior Court was able to consider his claims on the merits, the first step of which occurred when it issued the "Final Wind Up Plan" to govern the wind up of the partnership. Thus, the "Final Wind Up Plan" cannot be considered a modification of the preliminary injunction, since **the preliminary injunction expired by its own terms when the Superior Court issued its merits decision.** *Id.* at *3n.3. (Citation Omitted)(Emphasis added).

In fact, this Court initially issued an "on the merits" decision on November 7, 2014, when it granted summary judgment, finding that a partnership existed between Yusuf and

Hamed.¹ Thus, as the Supreme Court stated, the injunction has now expired. Since there is no longer a preliminary injunction, the bond must be released.

As noted by the V.I. Supreme Court in its first opinion regarding this case, *Yusuf v Hamed*, 59 V.I. 841, 2013 WL 5429498 (V.I. 2013):

Federal Rule of Civil Procedure 65(c) provides that a court may issue a preliminary injunction “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been **wrongfully enjoined or restrained.**” *The purpose of this security is to guarantee that the enjoined party will be compensated for the expenses of complying with an **erroneously issued injunction.*** . . . *Id.* at 859-860, * 9 (Emphasis added.)

This Court entered a preliminary injunction to preserve the status quo as to the operation of the stores pending a final resolution as to whether the stores were owned by United Corporation or by a Hamed-Yusuf partnership. *See Hamed v Yusuf*, 2013 WL 1846506 (V.I. Super. 2013). This Court’s summary judgment finding that there was in fact a partnership, which is now being dissolved based upon the agreement of both partners, confirms that the preliminary injunction was not erroneously issued.

Thus, it is respectfully requested that the bond be discharged and the funds/property securing the bond be released forthwith.² A proposed order is attached.

¹ As this Court noted on page 2 of that November 7th decision:

In his Motion re Master, Defendant Yusuf conceded the existence of a partnership by operation of law between himself and Plaintiff Hamed, and requested that this Court dissolve said partnership. *See Motion re Master*, ¶7. **In subsequent filings and in open court, Defendants have reiterated their concession as to the existence of the partnership.** (Emphasis added).

² This motion supersedes and moots a prior April 22, 2014 motion to reduce the bond filed after the Defendants conceded the partnership issue even though the PI remained in effect at that time.

Dated: March 16, 2015



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2015, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
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HAMED, MUFEEED HAMED,)
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and **PLESSEN ENTERPRISES, INC.,**)

Counterclaim Defendants.)

**ORDER FOR THE DISCHARGE OF THE PRELIMINARY INJUNCTION BOND
AND RELEASE OF PROPERTY AND CASH SECURING SAID BOND**

The Plaintiff has moved to discharge the preliminary injunction (PI) bond, as the PI has been dissolved. Upon consideration of the matters before the Court, it is hereby ORDERED:

That the Clerk of Court is directed to return all funds paid into the treasury of the Court as part of the PI bond to the Plaintiff. Additionally, the following properties are hereby discharged as part of the bond so that this Order can be recorded against those properties discharging them from any lien of this Court's prior bond Order:

Plot 6F (consisting of 0.560 U.S. acre) and Plot 6H (consisting of 0.566 U.S. acre) of Estate Carlton, West End Quarter, as more fully described on Public Works Drawing No. 1775, dated May 6, 1965, revised March 7, 1972.

Plot No. 100-E of Estate La Grande Princesse, Company Quarter, consisting of 1.199 U.S. Acre, as more fully shown and described on Department of Public Works Drawing No. 2570 dated February 5, 1969.

Plot No. 100-F of Estate La Grande Princesse, Company Quarter, consisting of 0.558 U.S. Acre, as more fully shown and described on Department of Public Works Drawing No. 2570 dated February 5, 1969.

Road Plot No. 100-G of Estate La Grande Princesse, Company Quarter, consisting of 0.237 U.S. Acre, as more fully shown and described on Department of Public Works Drawing No. 2570 dated February 5, 1969.

Plot No. 6C, consisting of 1.002 U.S. Acres, more or less, of Estate Carlton, West End Quarter, Frederiksted, St. Croix, as more fully shown in P.W.D. Drawing No. 1775 dated May 6, 1965 as revised May 10, 1966.

Plot 100 Estate Eliza's Retreat, East End Quarter "A", consisting of 0.542 U.S. acre more or less, as shown on OLG Drawing No. 4328, dated July 9, 1986, revised May 4, 1989.

Finally, the following pending motions are denied as moot:

- (1) Defendant's February 7th motion to require the plaintiff to substitute the property pledged by Hisham Hamed as part of the bond; and
- (2) Plaintiff's April 22, 2014, motion to reduce the bond.

Dated:

HONORABLE DOUGLAS A. BRADY
Judge, Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of Court

By: _____
Deputy Clerk

Dist: Joel H. Holt, Carl Hartmann, Gregory Hodges, Nizar Dewood, Mark Eckard,
Jeffrey Moorhead