

**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

**PLAINTIFF’S MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR
RECONSIDERATION OF PORTION OF RENT ORDER**

On April 27, 2015, this Court entered an order directing the Liquidating Partner to distribute certain rents to United Corporation (“United”). While the Plaintiff respectfully disagrees with this ruling, this motion for reconsideration is directed at just one portion of that Order involving the full payment of this rent to United now.

In this Court’s January 7, 2015 Liquidation Order, it directed the Liquidating Partner to establish a Liquidating Expenses Account for the Wind Up Expenses. While the amount of rent that has accrued since January 2012 is not all related to the liquidation time period, the Plaintiff has always conceded that some amount of rent was due for this time period. Thus, **the Plaintiff does not seek reconsideration of this Court’s directive that rent accrued since 2012 be paid now**, subject to the Court’s

instruction that the issue of the exact square footage for this rent calculation be preserved for later.¹

However, it is respectfully submitted that the disputed portion of this Court's April 27th Order regarding the rent from 1993 and 2004, totaling \$3,399,679.73, is part of the "Claims Resolution" process and should not be paid now. In short, while this motion for reconsideration will not ask this Court to review its reasons for allowing this "1993-2004 rent claim," **it is respectfully submitted that the 1993-2004 rent claim should not be paid until the final accounting is completed due to potential offsets against it.**

In this regard, this Court directed in Step 6 of the January 7, 2015 Liquidation Order (on page 9) that the parties submit their proposed accounting and distribution plan 45 days after the completion of the liquidation of the Partnership Assets. Thus, the "Claims Reserve Account" has its own procedure that would allow offsets against amounts owed a party, such as this rent claim for 1993-2004.

As this Court will recall, Yusuf unilaterally paid United \$2,784,706.25 on August 15, 2012, over Hamed's objection, a copy of which is attached as **Exhibit A**. As noted in this Court's April 25, 2013, preliminary injunction opinion at Finding 35 and 36, these funds were improperly paid to United and then used by United to buy certain real property and other assets in its own name. See *Hamed v Yusuf*, No. SX-12-CV-370, 2013 WL 1846506 (Super. Ct. Apr. 25, 2013), *aff'd*, *Yusuf v Hamed*, 59 V.I. 841 (V.I. Sept. 30, 2013). As noted by Finding 38, Yusuf also used partnership funds to pay United's legal bills. *Id.* The payments totaled \$504,591.03. See **Exhibit B**.

¹ As noted in footnote 2 of this Court's April 27th Order, the issues related to the square footage of this area can be addressed later as part of the Liquidating Partner's and Master's responsibilities during the wind-up process.


As such, it is respectfully submitted that United's disputed "Claim" of \$3,399,679.33, which has now been found to be owed, should not be disbursed until the sums owed the partnership by United are also determined and offset as appropriate. Indeed, absent such an offset, what power does this Court have over United to re-pay this sum since *United is not a partner subject to the partnership liquidation process?* Indeed, what mechanism allows for an offset of the square footage calculation noted in footnote 2 of this Court's April 27th Order if one is determined to be due?

Clearly it would be manifestly unjust for United to collect now on a disputed claim, yet not be subject to an offset of a valid claim against it pursuant to this Court's "Claims Resolution Process." Accordingly, this situation warrants reconsideration under subsections (2) and (3) of District Court Rule 7.3, applicable to this Court pursuant to Superior Court Rule 7.

Thus, it is respectfully submitted that this Court **reconsider just the portion of its order directing the disputed rent to be paid now** (not reconsideration of the amount owed). Because this Court instituted a claims procedure for paying such claims subsequent to this claim being raised (which would include amounts due the partnership by United), partial payment of a disputed claim, even if owed, should not be made until all offsets are also considered and determined.

In this case, a claim for a significant offset against United has already been received into the record, so this request to delay the payment due is neither frivolous, nor taken for the purpose of delay. As such, it is respectfully requested that the relief sought be granted, directing that the rent now determined to be due for 1993-2004 not be paid until all claims against United are also resolved. A proposed order is attached.

Dated: May 4, 2015



Joel H. Holt, Esq.
Counsel for Mohammad Hamed
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com

Carl J. Hartmann III, Esq.
Counsel for Waheed Hamed
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Telephone: (340) 719-8941
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2015, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
edgarrossjudge@hotmail.com

Nizar A. DeWood
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
dewood@gmail.com

Gregory H. Hodges
Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST.Thomas,VI00802
ghodges@dtflaw.com

Mark W. Eckard
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
mark@markeckard.com

Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com



UNITED CORPORATION D/B/A
 PLAZA EXTRA
 340-778-6240
 PO BOX 763
 CHRISTIANSTED, USVI 00821-0763

TO THE ORDER OF: **United Corporation.**
 Two Million Seven Hundred Eighty-Four Thousand Seven Hundred Six Dollars & 25/100
 \$ 2,784,700.25

Date: **8/15th / 2012.**

101-606/216

THE BANK OF NOVA SCOTIA
 87 DUNDAS STREET WEST
 TORONTO, ONTARIO M5G 1S5

1154

11001154 10215050691 058 60086413

[Signature]

Blumberg No. 5206

EXHIBIT

A

CHECK 3977

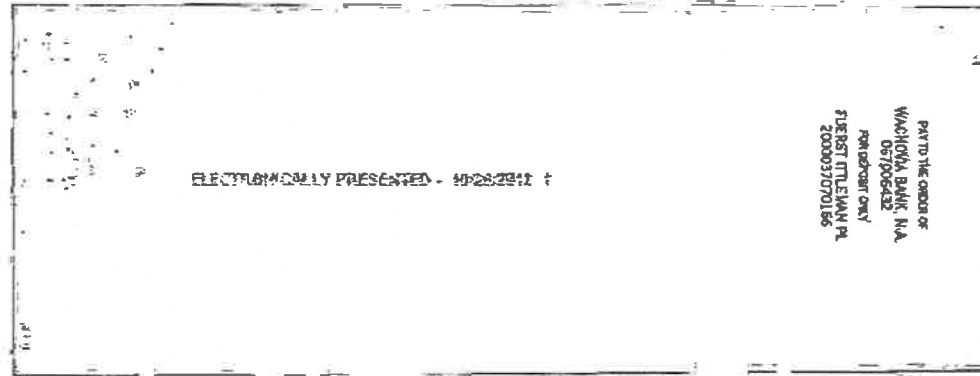
Dated: Friday, October 19, 2012

Amount: \$99,254.45

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL

Account: Wachovia Bank N.A.
2000037070166



Confidential

UNITED CORPORATION DBA PLAZA EXTRA (840) 719-1870 PO BOX 3649 ST CROIX, VI 00851		BANCO POPULAR DE PUERTO RICO 101-667216	3977 3977
		DATE	Oct 19, 2012
		AMOUNT	\$ 329,011.50
PAY TO THE ORDER OF:		Twenty-Nine Thousand Eleven and 50/100 Dollars	
FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		<i>[Handwritten Signature]</i> AUTHORIZED SIGNATURE	
Memo:			
⑆0003977⑆ ⑆021606674⑆ 1910256269⑆			

Blumberg No. 5208

EXHIBIT

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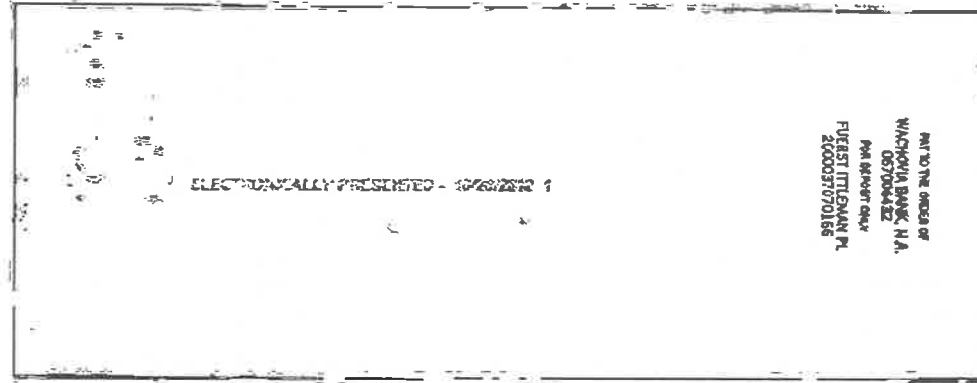
CHECK 3979

Dated: Friday, October 19, 2012



Amount: \$15,067.26

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL
Account Wachovia Bank N.A.
2000037070166



Confidential

UNITED CORPORATION DBA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00831		BANCO POPULAR DE PUERTO RICO 901-887210	3979 CHECK #
		DATE	Oct 19, 2012
		AMOUNT	\$ 15,067.26
Fifteen Thousand Sixty-Seven and 26/100 Dollars			
PAY TO THE ORDER OF: FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		 AUTHORIZED SIGNATURE	
Memo:			

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UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

4195

CHECK NUMBER

DATE

Nov 16, 2012


AMOUNT

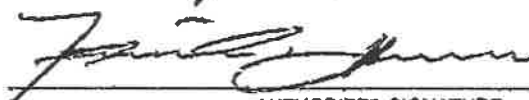
\$ 99,254.45


PAY
TO THE
ORDER
OF:

Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars
FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:





AUTHORIZED SIGNATURE


⑈004195⑈ ⑆021606674⑆ 191⑈ 256269⑈

HAMD203422

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Security Features Included

PAY TO THE ORDER OF
 WACHOVIA BANK, N.A.
 067006432
 FOR DEPOSIT ONLY
 FUERST ITTLEMAN PL
 2000037070166

2000037070166

11/15/2016
 FUERST ITTLEMAN PL
 2000037070166
 WACHOVIA BANK, N.A.
 067006432
 FOR DEPOSIT ONLY

FIAMD203423

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-867/218

4642
CHECK NUMBER

DATE
Jan 21, 2013

Pay to the order of _____
Type _____
Issue Date _____
Pay to the order of _____
Pay to the order of _____
Pay to the order of _____

AMOUNT
\$ ***\$111,660.24

PAY TO THE ORDER OF: One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

[Handwritten Signature]

AUTHORIZED SIGNATURE

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HAMD261896

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PAY TO THE ORDER OF
WACHOVIA BANK, N.A.
067006432

FOR DEPOSIT ONLY

FUERST ITTELMAN PL
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AM261897

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO

Pin	101-667316
Type	Open <i>OK</i>
Issue/Exp.	AD <i>X</i>
Retn	Dep. Only <i>OK</i>
Hist.	<i>OK</i>
Sig.	<i>OK</i>
HPF	<i>OK</i>
Memo	<i>OK</i>

4819
CHECK NUMBER

DATE
Feb 13, 2013

AMOUNT
\$ ***\$112,383.32

PAY One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars

TO THE ORDER OF:
FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo :

David Joseph Fuerst

AUTHORIZED SIGNATURE

⑈004819⑈ ⑆021606674⑆ 191⑈ 256269⑈

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PAY TO THE ORDER OF
WACHOVIA BANK, N.A.
067006432

FOR DEPOSIT ONLY

FUERST ITTLEMAN PL
2000037070166

3087736136

HAMD277363

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

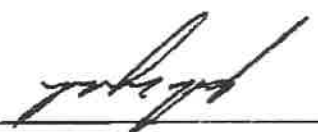
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101-667/216

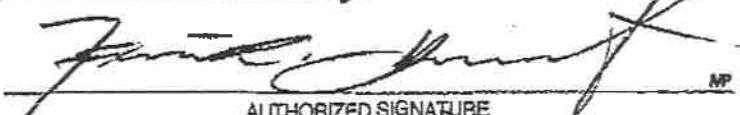
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DATE
Mar 6, 2013

AMOUNT
\$ ****\$82,274.87

PAY Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars
TO THE ORDER OF: FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131





AUTHORIZED SIGNATURE


Memo:

⑈005005⑈ ⑆021606674⑆ 191⑈256269⑈

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PAY TO THE ORDER OF
WACHOVIA BANK, N.A.
067006432
FOR DEPOSIT ONLY
FUERST ITLEMAN PL
2000037070166

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UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

5193
CHECK NUMBER

DATE
Apr 3, 2013

AMOUNT

\$ *****\$54,938.89

PAY TO THE ORDER OF: Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

HAMD562231 005193 021606674 191 256269



AUTHORIZED SIGNATURE


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WACHOVIA BANK, N.A.
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 HAMD562232

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

MOHAMMAD HAMED, by his)
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)
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

ORDER RE RELEASE OF RENT

On April 27, 2015, this Court entered an Order determining the amount of rent due United by the partnership for two different time periods. The Plaintiff has moved for partial reconsideration of this Court's Order, limited to just the issue of the release of the disputed rent of \$3,399,679.73 owed by the partnership to United. Plaintiff seeks reconsideration of the portion of the Order directing this sum to be paid now, as Plaintiff identified certain potential offsets against this amount due the partnership from United, which will be determined pursuant to Step 6 of the January 7, 2015 Liquidation Order.

Upon consideration of the matter before the Court, it is hereby Ordered that the rent for 1993 to 2004 of \$3,399,679.73 continue to be held in escrow until the partnership claims for any offsets against United are resolved. Subject to this one aspect of this Court's April 27, 2015, the remainder of that Order remains unchanged.

Dated: May ____, 2015

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