

**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

**OPPOSITION TO “EMERGENCY” MOTION TO QUASH TWO SUBPOENAE:
TO SCOTIABANK AND BANCO POPULAR**

In this proceeding, Fathi Yusuf and the United Corporation have repeatedly stated and testified that by using bank accounts in United’s name, Fathi Yusuf was “in charge” of the accounting for the Plaza Extra Partnership. This Court referred to this concept in its April 27, 2015 decision regarding rents due at pages 4-5. Moreover, this Court has already found that after the United Corporation declared in 2012 that *it* (not the partners) wholly owned all of the Plaza Extra assets, United and Fathi Yusuf:

1. removed \$2.7 million from Partnership accounts to which the Hameds had access and the ability to see the account information and moved the funds to a United account where the Hamed could neither see what was happening or access the accounts,
2. lied in open court about where those funds went and what they were used for,

3. used more than a half million dollars of other partnership funds directly out of partnership accounts to pay United's private counsel, and
4. denied Hamed access to the partnerships accounting and records.

This Court subsequently issued orders allowing access to partnership accounts and accounting – and forbid any further unilateral transfers to bank accounts that Hamed did not have access to.

On September 18, 2014, a Master was appointed by the Court – at which time the Court “ordered that upon consideration of the Parties' presentations, the Court will adopt **the final plan for winding up the Partnership to be overseen by the Master.**” Then, on January 9, 2015, in addressing the dissolution of the Partnership, this Court entered an Order Adopting Final Wind Up Plan, appointing Fathi Yusuf as the Liquidating Partner and directing him to submit a final accounting. However, to make sure Hamed was able to verify the accounting being done by the Liquidating Partner, the Plan also provided, at page 8:

All previous Partnership accountings are deemed preliminary. Hamed's accountant shall be allowed to view **all partnership accounting information from January 2012 to present** and submit his findings to the Master. (Emphasis added.)

To accomplish this review of Yusuf's accounting, Hamed hired two CPA firms to review the accounting materials submitted by the Special Master. Working with the Master, Judge Ross, the CPAs have:

- Obtained and reviewed information
- Requested supporting documentation from John Gaffney
- Compared financial information to underlying supporting documentation (such as bank statements, cancelled checks, registers, invoices, agreements and other financial records)
- Observed, through an interview process, the Company's personnel's knowledge to execute the procedures and controls in place and level of reliability

- Attempted to investigate any issues which were found to be questionable or contrary to generally acceptable accounting principles (GAAP)

It was determined by these CPAs that many of the documents necessary to conduct even a basic accounting were not supplied – either because of time constraints on accounting personnel or because it turned out that the documents simply were not in the partnership's possession. This information was then provided to Judge Ross on May 23, 2016. See **Exhibit 1**. These included (but are not limited to) items such as cancelled checks for most accounts. The CPAs identified many issues with the partnerships accounts and also regarding two sets of accounts (Plessen and United) referenced in the financials from or to which partnership funds were directly paid or transferred.

John [Gaffney] states he will be unable to provide most of the canceled checks, invoices to match payments and bank statements. Our CPAs did not understand this to be the case. Indeed, they have made it very clear that it would be impossible for any CPA to adequately review a partnership's financials without vendor invoices, the underlying checks and bank statements. They raised this exact point with you in our meeting on St. Croix – although, as they said then, they are willing to pursue these independently you suggested.

* * * *

As you know, John is being paid on a full time basis, along with two assistants, by the Partnership, not by the Yusufs. While supplying supporting documents and explanations may be a time-consuming burden, our CPAs tell us that it is impossible for anyone to understand journal entries by just looking at them without explanation or backup. Indeed, to try to make this task easier, they met with the Hameds and their counsel over many weeks to eliminate hundreds of issues and questions - - and pared their questions down to a bare minimum 130 items regarding three years of accounting.

* * * *

With these general comments in mind, to simplify and speed up this process, we suggest the following steps be followed:

1. It is clear that many of the documents needed by our CPAs cannot be supplied by John, regardless of the "why" of this. We also

understand John is taking 30 days for a leave of absence from this process. However, if you allow us in the interim to begin the process of issuing subpoenas for the necessary underlying documents from banks, vendors and others, we can begin to get the underlying documents that John has found to be too cumbersome (or impossible) to produce.

Indeed, the person doing the accounting for the Liquidating Partner, John Gaffney, admitted in a recent letter dated May 17, 2016 (see **Exhibit 2**):

Similarly, the extensive requests for documents supporting expenditures including cancelled checks are questionable knowing that no payments were made without signatures from a member of each family. If the Hameds disputed an item, they simply refused to sign the check. **Admittedly, we aren't able to provide many cancelled checks.**

* * * *

Your recent document requests and inquiries submitted last week **appear to be legitimate** as VZ has challenged or questioned some of my accounting decisions in winding up the Partnership.

* * * *

Under the pending VZ requests, instead of being "allowed to view" the relevant partnership accounting information, **I am being effectively requested to gather and spoon feed that information** to VZ. (Emphasis added.)

As a solution, in that meeting it was suggested to us that instead of trying to get the needed records from the Liquidating Partner and his accountant, it would be faster for Hamed to complete his accounting verification (and be more efficient and create less friction) if the needed documents were obtained directly from the banks and vendors. This would take the burdens listed above off of accounting personnel.

Thus, the Master specifically discussed and approved this procedure. See **Exhibit 3**. The CPAs then listed the initial documents they would need and the two subpoenas at issue here were filed with the Court for signature – with a Notice of Filing

with the subpoenas attached provided to opposing counsel at the time, and were then served.

Yusuf and United have now filed the instant "Emergency Motion" to quash even though the Master specifically approved their issuance in furtherance of the very limited purposes of the Order. In short, the order adopting the final plan provided that the Hameds could view all applicable records, which was a process the Master would oversee. Thus, when the applicable accounting records could not be provided by partnership accounting personnel, the Master allowed such a viewing by subpoena. As such, the motion to quash should be denied.

One final comment is in order. United and Yusuf seek to further stall these proceedings because of the death of Mohammad Hamed. Without saying so directly, they seem to imply that under the *Revised Uniform Partnership Act* as enacted in the U.S. Virgin Islands, 26 V.I.C. § 1 *et seq.*, a partner may not alienate his share of a partnership without causing dissolution of the partnership. However, this is an incorrect statement of the law. The death of a party does not stay proceedings for the distribution of property once dissolution has been ordered and is being effectuated. A motion to substitute a party will be made shortly. Thus, the attempt to delay the effect of the two subpoenas based on the death are without merit.

In summary, there is no need to delay this proceeding due to the death of Mr. Hamed, nor is there any reason to delay the subpoenas, as permitted by Judge Ross, to the two banks.

Dated: July 6, 2016



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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
edgarrossjudge@hotmail.com

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May 23, 2016

Hon. Edgar Ross
Special Master
edgarrossjudge@hotmail.com

Re: Plaza Accounting

Dear Judge Ross:

I am in receipt of John Gaffney's emails and enclosures of last Tuesday, May 17th. Before making three brief suggestions as to where to go from here to simplify this and save everyone time and stress -- I have a couple of observations in response to some points he raised that we did not previously understand, although this letter is certainly not intended to be confrontational in any way, as we just want to complete this process.

John states he will be unable to provide most of the canceled checks, invoices to match payments and bank statements. Our CPAs did not understand this to be the case. Indeed, they have made it very clear that it would be impossible for any CPA to adequately review a partnership's financials without vendor invoices, the underlying checks and bank statements. They raised this exact point with you in our meeting on St. Croix -- although, as they said then, they are willing to pursue these independently as you suggested.

By way of another example, John states that he wanted the Hamed accountants present in his office so they "could discuss and make joint decisions" on accounting issues. No one ever made this (excellent) suggestion previously, as the only request was to provide someone to do some menial tasks, not participate in the accounting decisions. As you are well aware, the Hameds would have welcomed the chance to have their CPAs actively participate in accounting decisions about the partnership wind-up!

As you know, John is being paid on a full time basis, along with two assistants, by the Partnership, not by the Yusufs. While supplying supporting documents and explanations may be a time-consuming burden, our CPAs tell us that it is impossible for anyone to understand journal entries by just looking at them without explanation or backup. Indeed, to try to make this task easier, they met with the Hameds and their counsel over many weeks to eliminate hundreds of issues and questions -- and pared their questions down to a bare minimum 130 items regarding three years of accounting.



The questions are neither complex, nor should they require vast amounts of time. Most are answerable in a single paragraph.

Finally, the level of the responses to the specific, numbered questions provided with John's letter were insufficient and still need to be supplemented. He responded to just 11 items out of the total 130 items sent to him – answering 2 in full, and the other 9 only partially. For example, here are our concerns about several of the inquiries:

- Item 3002 – no response was given to the question of what accounting basis is there for the Partnership paying the United Shopping Center's gross receipt taxes after 2013 when the clear dispute among the parties arose. An answer should be a paragraph.
- On Item 3006 – no response was given to the question of why the accounting reflects Partnership funds being used to pay Fathi Yusuf's personal legal fees and what is the accounting basis for this expenditure. Again, a response would take a paragraph or two.
- On Item 3007 – no response was given to understand how the accounting reflects or can be used to solve the alleged imbalance in credit card points between the Yusuf's and the Hamed's--- simply stating that "Included herein are copies of vendor reports for credit cards used at Plaza East. These reports reflect all activity since January 1, 2013," and then noting that "*Prior to 2013, it is impractical if not impossible to provide all credit card activity as vendor accounts for credit cards never reflected activity properly.*" (Emphasis added).

With these general comments in mind, to simplify and speed up this process, we suggest the following steps be followed:

1. It is clear that many of the documents needed by our CPAs cannot be supplied by John, regardless of the "why" of this. We also understand John is taking 30 days for a leave of absence from this process. However, if you allow us in the interim to begin the process of issuing subpoenas for the necessary underlying documents from banks, vendors and others, we can begin to get the underlying documents that John has found to be to cumbersome (or impossible) to produce.
2. In the meantime, we will also modify the 11 partially-answered questions and 119 remaining questions to remove all document requests – which leaves just the direct questions that John can then easily answer. While we would prefer to not even ask John for this information at this point, our CPAs tell us that this information really cannot be gleaned from any other sources or documents – as they all go to his decisions and choices in constructing and documenting the financials. However, we will not send them to John until June 20th so John is not bothered during the next 30 days.
3. After we get John's responses to the revised questions as well as the documents responsive to the subpoenas, our CPAs will then meet with John to go over any

remaining questions about the collected documents and his responses. This would involve nothing more than standard CPA questions about the basic accounting matters -- being asked of the person paid to provide this accounting, but discussion at that juncture should be quick because of this new streamlined approach.

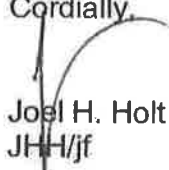
As noted, we understand John is taking a leave of absence for 30 days and certainly have no problem with that. We can start the subpoenas now to expedite this process and also have the revised questions ready for him when he returns.

This, along with our other suggestions, removes John from most of the remaining effort -- *and reduces the time he must spend to accomplish this court ordered process.*

I have not copied John (or anyone else) on this letter, as I thought I would seek your input first, as I want to keep the unneeded, adversarial acrimony to a minimum. If you want me to share this letter with anyone, please let me know.

Please let me know if these non-confrontational, time-saving suggestions are acceptable so we can proceed.

Cordially,



Joel H. Holt
JH/H/jf



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May 17, 2016

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Dear Joel,

This letter accompanies my first submission of responses to document requests and questions from Vizcaino Zomerfeld (VZ). At this point I must point out the burdensome, time-consuming and expensive nature of these document requests. After reviewing my responses, you can decide yourself whether any of them serve in winding up the Partnership.

In our very first meeting with VZ in your office, I challenged the very extensive nature of the initial document request. Betty Martin, VZ Partner verbally backed off the initial request some. When I asked her about the scope of VZ's review, the answer was vague and you even questioned that scope in a later conversation with me in your office. We did establish that the scope did not include a full audit as I made it clear we did not have the resources for such work.

I suggested a less burdensome and more productive approach that Betty and her team thought could be implemented. The suggestion was to assign a junior level auditor who would work along with me. That was before the St. Thomas store auction. After the auction our challenge was overwhelming and would have likely crashed except for the assistance from Humphrey Caswell, former PE St. Thomas Controller.

Admittedly, there was a long gap between our initial meeting in March 2015 and beginning VZ field work in January 2016. During that gap, we completed the Kauffman Rossin DOJ review while I continued receiving extensive accounting record requests from VZ. But due to the extended time between the first and second meetings, I was able to provide most of the records. But doing so was so burdensome, time-consuming and expensive that I recommended again that I provide all accounting databases augmented with 6 month increments of original records. In other words, I would deliver 6 months of original records and upon review completion I would deliver the next 6 months and pick up the first 6 months.

To date the first 6 months of original records have not been returned nor have you requested the next 6 months. During our meeting in January 2016, I suggested again that someone be assigned to work closely with me, especially in response to VZ's request for detailed till stat reports. Instead of requesting the provision hundreds of detailed till stat reports, have someone from your team work with me to review a handful of such reports. Once done, I was confident VZ would conclude that reviewing hundreds was unnecessary just as Kauffman Rossin did during their review.



Keep in mind, the Hameds controlled the cash rooms and managed the cash registers in all three stores during my entire time with the company. The Yusufs were much less involved in this area and although I implemented the "sales journal" system, I had no indication that there were any weaknesses or other issues in the Hameds' management of the cash rooms and registers. Once someone from VZ duplicates the documents contained in the daily sales journals and the integrity therein, I'm confident they would see that a document request for hundreds of till stat detail reports is non-productive and unnecessarily time-consuming and expensive.

Similarly, the extensive requests for documents supporting expenditures including cancelled checks are questionable knowing that no payments were made without signatures from a member of each family. If the Hameds disputed an item, they simply refused to sign the check. Admittedly, we aren't able to provide many cancelled checks. Once you review my responses, you should clearly understand why. In view of the extent to which I've provided original bank records though, I question the intent behind continued requests for cancelled checks or bank statements that VZ knows we don't have, either because the Hameds retained possession or banks refused to provide them.

Your recent document requests and inquiries submitted last week appear to be legitimate as VZ has challenged or questioned some of my accounting decisions in winding up the Partnership. While I don't object to being challenged, I would like to say that I put off having to make some decisions as long as possible. I mentioned this in my meetings with VZ as well. The very request for VZ to assign someone to work with me was so we could discuss and make joint decisions on nominal issues.

For instance, after the March 8, 2015 East/West split there were employee loans that were extremely difficult to track and collect. Employees who owed money at PE East transferred to PE West and vice versa. While I offered to provide and may have even sent details to PE West, I assumed that some loans simply would not be collected. Or that if they were collected, I might not be informed of it as in the case of 3 payments by one employee at PE West who we followed up on a few months ago. Therefore, I made the decision to write them off with the plan of revisiting them when time allowed. There are adjustments (credits) however small that are due to the Partnership. But the time it takes to research these credits is being consumed in otherwise burdensome, time-consuming and expensive document requests.

With the provision of what I've done so far, I plan to take a leave of absence from any other work for the Partnership related to these document requests for at least one month in order to tend to other emergencies, many of which relate to the Partnership. Refer to my documents of ongoing PE challenges with taxing authorities which are being ignored due to VZ document requests.

Also, I request for VZ to return the original records consisting of the sales journals for PE East and West for the first 6 months of 2013 and after one month for VZ to assign someone who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies. As you know, Section 9, Step 4 of the Plan simply provides that "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to

present..." To date, no one has been denied access to original records that we possess. Under the pending VZ requests, instead of being "allowed to view" the relevant partnership accounting information, I am being effectively requested to gather and spoon feed that information to VZ. I respectfully submit that my proposal to have a VZ accountant work on premises with the original records is much more consistent with the information access contemplated by the Plan than the process of my responding to the myriad information requests submitted by VZ.

The Master has reviewed and approves the process I have recommended.

Sincerely,


John Gaffney

From: Edgar Ross [mailto:edgarrossjudge@hotmail.com]
Sent: Monday, June 27, 2016 5:35 PM
To: Gregory H. Hodges
Cc: JOEL HOLT
Subject: RE: [REDACTED]s To BNS and BPPR

Atty Hodges :

I had not responded earlier because I hoped the Attorneys would reach an agreement but now I must. The liquidation of the partnership is a separate and distinct process than the civil litigations and is not governed by the procedural rulings of the civil suits.

I permitted the discovery as part of the fact-finding process to assist in resolution of some of the accounting questions that were becoming burdensome and too time consuming for the liquidating partner .

The issues you raise as to the scope of the [REDACTED]s while valid as to the permitted scope is nonetheless going to be allowed as the requested documents pertain to anticipated claims that will be made in the near future. Hindering discovery will only prolong the liquidation process and incur unnecessary expenses. I will not stand on formalities in a process that should be speedy, just, fair and as simple as possible. At end of the process anyone may seek review of any matter with which they disagree.

Sent via the Samsung GALAXY S®4, an AT&T 4G LTE smartphone

