

**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 and Counterclaimants.

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,
vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**
JURY TRIAL DEMANDED

**PLAINTIFF'S REPLY TO DEFENDANTS' "RESPONSE" TO
PLAINTIFF'S MOTION FOR FURTHER INSTRUCTIONS**

Plaintiff Hamed filed a motion seeking further directions from this Court, asking this Court to order a Final Accounting to be completed and set forth a procedural path, including a discovery schedule, so that the remaining legal and factual issues can proceed to be tried by a jury. Yusuf's "Response" to this *Motion for Further Instructions* asserts several points that are misleading, thereby requiring a reply.

I. No Final Accounting has been completed, which must be done.

The Defendants do not disagree that a “full accounting” before a final liquidation can occur under the applicable partnership law and by Order of this Court.¹ Instead, they now argue that the BDO “expert report” they submitted on September 30, 2016, when added to the post-2012 Gaffney accounting, constitutes such a “final accounting” since the partnership’s inception in 1986.² That argument is absurd.

First, the Liquidating Partner’s “Final Accounting” (done by Gaffney) was sent on **November 16, 2015**, which the Defendants attached as Exhibit 1 to their “Response.” While it only covered the time period from 2012 to 2015, it did not reference any BDO report, nor could it have done so since it did not yet exist.

Second, Judge Ross determined “that the Partnership’s Accounting is more than 99% complete” in an email sent on **August 31, 2016**, which the Defendants attached as Exhibit 2 to their “Response.” Again, that email did not reference any BDO report, nor could it have done so since it did not yet exist.

Third, on September 30, 2016, the Plaintiff filed a “Notice of Objection” to Judge Ross’ directive, attached hereto as **Exhibit A** (without attachments), specifically pointing

¹ Indeed, this Court’s “Winding Up” Order stated in Section 4 (pp. 4-5), that a distribution could only be made **after a full accounting was** done, while Section 5 (p. 5) permitted a distribution **only after** that full accounting was done.

² Defendants asserts on page 8 of their “Response” as follows:

“Furthermore, Hamed's claim that no accounting for the period from 1986 - 2012 has even been attempted, much less submitted, is patently false. **Indeed, the BDO Report that was submitted in support of Yusuf's accounting claims and proposed distribution plan provides such an accounting.**” (Emphasis added).

out that no Final Accounting has been submitted as required by this Court and the applicable partnership law. No response was filed to that Notice.

Fourth, **after** the instant motion for instructions was filed, which again pointed out that no Final Accounting has been done, the Defendants belatedly claimed for the first time that the BDO expert report, filed on September 30, 2016, was allegedly such an accounting. However, the BDO expert report repeatedly admits it was never intended to be any sort of "final accounting", as it **expressly disclaims any such characterization** (See excerpts attached as **Exhibit B**):³

- It begins its report by stating on p. 3 under section 2.2:

Our procedures do not constitute an audit, review, or compilation of the information provided and, accordingly, **we do not express an opinion or provide any other form of assurance on the completeness or accuracy of the information.** The use of the words "audit" and "review" throughout this document **do not imply an audit or examination as used in the accounting profession.** (Emphasis added).

- It admits that **no analysis at all was done prior to 1994.**⁴
- It admits at p. 22, with regard to "January 1994 thru September 2001" that no effort was made at any accounting.
- It admits at p. 22, that "Accounting records and/or documents provided to us for the periods **prior to 2003 are incomplete.**"
- It admits at p. 22 that only some of the years were even analyzed, stating "Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets **were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.**"

³ The full BDO report is attached to the motion to strike it, filed on October 3, 2016.

⁴ At p. 22, BDO admits the "Accounting records of Plaza Extra-East were **"incomplete and/or insufficient to permit us to reconstruct a *comprehensive accounting of the partnership accounts* before 1993."**

In summary, as BDO admits, no effort was made to check or verify any of the information, with vast periods of time periods where all records are missing. Instead, the BDO report was intended to be – and was submitted as – one of Yusuf's damage claims, not as a final accounting.

In short, despite conceding that a full accounting must be done, the Defendants' belated attempt to mislead this Court by suggesting the BDO report was such an accounting is without any factual support on the record before this Court. Thus, a final Liquidation of the partnership cannot take place until such an accounting is done, as ordered by this Court and required by the applicable partnership law.⁵ As such, this Court should direct the Liquidating Partner to submit such an accounting or concede one cannot be done.

II. A jury must to empaneled as a matter of right.

The Plaintiff is entitled to a jury trial on the several actions at law asserted against Yusuf and United, a third party, as it is undisputed that a timely jury demand was made in the initial Complaint. Likewise, a timely jury demand was also made in the action Yusuf had consolidated here (SX-2014-CV-278).⁶

In their "Response" the Defendants again list the history of this litigation in support of their argument that this case is no longer a jury matter either because

⁵ The parties could explore how to proceed on an alternate path without a Final accounting if the Liquidating Partner concedes one cannot be done, which the Liquidating Partner apparently does not want to do because it then raises certain presumptions against him.

⁶ Indeed, at Yusuf's request, this Court has now consolidated another case with this one, an action at law where a jury demand was made. See **Exhibit C**. Thus, a jury must be empaneled. Moreover, the parties have stipulated that two other cases be consolidated with this case as well (see **Exhibit D**) – both have jury demands.

accounting is "equitable" or Hamed waived the jury demand. Thus, those arguments require a brief response, as a decision on the *Motion for Further Instructions* on how to proceed must address this threshold question now.

A. Jury Trials where equitable claims are included with legal claims

The jury issue was addressed in the Plaintiff's opposition to the motion to strike his supplemental filing on this issue. As noted therein, it is firmly established that when a party seeks equitable relief with claims at law, the right to a jury trial on the claims at law are not waived despite the nature of the equitable claims. See *Dairy Queen v. Wood*, 369 U.S. 469, 478, 82 S.Ct. 894, 900, 8 L.Ed.2d 44 (1962); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07, 79 S.Ct. 948, 954–55, 3 L.Ed.2d 988 (1959).

Moreover, as the U.S. Supreme Court held in *Ross v. Bernhard*, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (1970):

where equitable and legal claims are joined in the same action, there is a right to jury trial on the legal claims which must not be infringed either by trying the legal issues as incidental to the equitable ones or by a court trial of a common issue existing between the claims. *Id.* at 537–38, 90 S.Ct. at 738.

The Defendants never addressed this legal argument, conceding that the Plaintiff has a right to a jury trial on his legal claims asserted in this case.

B. There has been no waiver of this fundamental right.

Having conceded the first point by not responding to it, the Defendants argue that Hamed somehow has waived his right to a jury. The record in this case does not support a finding of any such waiver.

First, despite the Defendants' acrimonious assertions to the contrary, on October 7, 2014, this Court stayed all "pending" discovery and motions practice in this case. See

Exhibit E. In June of 2016, Counsel for the Defendants acknowledged this fact in seeking to enforce the October 7th Order (See **Exhibit F**):

Likewise, **the Court acknowledged that there were a number of pending motions that the Court was holding in abeyance pending the parties' efforts to proceed with the liquidation process** that will be addressed at a later point (Emphasis added.)

While the Defendants now attempt to assert that its Motion to Strike the Jury Demand was somehow not one of *those* motions, clearly counsel for both parties clearly thought otherwise at the time.

Indeed, as noted in *Collins v Government of the Virgin Islands*, 366 F.2d 279, 284 (3rd Cir. 1986), it is black letter law that: "Since 'the right of jury trial is fundamental, courts indulge every reasonable presumption against waiver.'" *Id.* at 284 (quoting *Aetna Insurance Co. v. Kennedy*, 301 U.S. 389 (1937)). Thus, it would be error to hold that the Plaintiff waived his jury demand based on the facts before this Court, particularly in light of this Court's October 7, 2014, statement that "pending" motions were stayed. See **Exhibit E.**⁷

Moreover, the "Winding Up Order" entered on January 9, 2015, did not state that all remaining causes of action between the parties would be tried by the Special Master, or that legal issues like *Daubert* or Rule 56 rulings would be decided by the Master, as it instead stated in Section 9, Step 6 (pp. 8-9) as follows:

⁷ Even when an opposition memorandum is not filed, a court cannot "deem the motion conceded", as it still must address the merits of the motion. See *Hodge v. Virgin Islands Water and Power Authority*, 55 V.I. 460, 463–64 (V.I.Super., 2011) (Court must address motion on merits even if no opposition or a belated opposition is filed). *Accord, People of the Virgin Islands v. Rivera*, 54 V.I. 116, 125 (V.I.Super., 2010) (Motion to deem unopposed motion conceded denied, as motion must still be addressed on the merits).

Within forty-five (45) days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the FINAL WIND UP PLAN OF THE PLAZA EXTRA PARTNERSHIP funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination.

In short, at no point did this Court hold that the remaining causes of action at law or procedural motions, like the *Daubert* and statute of limitations motions, would somehow, magically, all be now decided by the Master.⁸

C. Summary

In conclusion, an order eliminating the Plaintiff's right to a jury trial would be improper where a timely jury demand has been made. For example, these claims are certainly jury questions:

- The issue of and damages for “breach of the joint venture agreement, breach of fiduciary duties, wrongful dissociation. . . [and] punitive damages. . .” are solely jury issues. See, e.g., *Meyer v. Christie*, 2009 WL 3294001, at *1 (D. Kan. Oct. 13, 2009) affirmed at *State Farm Fire & Cas. Co. v. Christie*, 2015 WL 751808, at *3 (D. Kan. Feb. 23, 2015).
- There are claims asserted against a third party – United – which are not part of the partnership accounting.
- There are several other causes of action consolidated with this case that have jury demands, which have been consolidated that are not part of the partnership accounting, and therefore must go to a jury.

Indeed, whenever there are **any** factual disputes in a case with issues at law, where a jury demand has been made they must be resolved by the jury.⁹

⁸ Indeed, how can the Special Master be the final decision maker on disputed payments he has already authorized (such as additional rent paid to United for amounts equal to insurance and taxes paid on the Tutu lease or the fees authorized to be paid to the Dudley firm), which he has acknowledged are not “final” and still subject to being challenged. See **Exhibit G**.

⁹ See, e.g., *Machado v. Yacht Haven*, 2014 WL 5282116 (V.I. 2014). **Indeed, the Supreme Court of the Virgin Islands recently affirmed this view in a case between these same parties, *United Corporation v. Waheed Hamed*, 2016 WL 154893, at *7 (Jan. 12, 2016).**

Finally, as *Collens, supra*, held:

Maintenance of the jury as a factfinding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.' *Id.* at 285 (quoting *Dimick v Schiedt*, 293 U.S. 474, 486 (1959)).

Thus, as a jury trial is required on the remaining causes of action and the consolidated case, this Court needs to resolve the jury issue before this case can move forward.

III. Discovery

The Defendants concede that more discovery is needed. However, the parties disagree on how that discovery should proceed. In this regard, **it is clear that both parties agree that discovery as to the post-2012 accounting should proceed without delay.** However, until there is an accounting for the pre-2012 period, discovery as to that accounting cannot yet take place.

As for discovery on the multiple claims filed by both parties on September 30, 2016, which include both pre-2012 items as well as post 2012 items, discovery would be greatly simplified (along with the remaining issues in this case) if the two pending *Daubert* motions challenging the reliability of the voluminous BDO and Integra reports, as well as the one remaining SOL motion, are resolved before such discovery proceeds. In this regard, the two *Daubert* motions are brief with straight-forward issues as to both:

- BDO Motion—this simple 10-page motion is based on the candid admissions in the BDO report that it cannot vouch for the accuracy or completeness of the data it relied upon in rendering its report, as discussed above, making it unreliable under the applicable *Daubert* standard.
- Integra Motion-this 4-page motion is based on the fact that Integra tries to value the Plaza West store as a going concern, *even though Yusuf's admitted* in a prior filing in this Court **that the Plaza West Store could “not be sold as a going concern because of the absence of commercial lease,”** confirming that this contrary expert opinion has no basis in fact to support such an opinion.

The SOL motion is one that is only slightly more complicated, which is based on the premise that all claims that pre-date the six-year time period prior to the filing of this litigation (including counterclaims) are barred under the applicable SOL. That ruling, if granted, which would eliminate the pre-2006 contract and debt claims.

Indeed, the Defendants do not argue that the resolution of these motions would not simplify this case and the needed discovery, they just argue that for some unexplained reason the Special Master, not this Court, should decide those legal, procedural motions. Of course, the Defendants cite no authority that would allow the summary delegation of this Court's judicial authority to decide *Daubert* and SOL motions to a Special Master. **In short, it is undisputed that resolving these motions will simplify the remaining discovery that may be needed.**

Thus, at the very least, entry of a scheduling order is needed at this time. While there is no need to delay discovery on the post-2012 accounting submitted by Gaffney, the discovery needed for the remaining "claims" submitted by both parties would be aided by a ruling on the referenced motions first.

I. Conclusion

For the reasons set forth herein, it is requested that this Court (1) order discovery to commence on the post-2012 accounting, (2) direct the Liquidating Partner to complete the pre-2012 accounting (or certify he cannot do so) and (3) rule on the pending two *Daubert* motions, as well as the pending statute of limitations motion, so that discovery on the remaining legal claims can then proceed in a more orderly fashion.

Dated: November 16, 2016



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

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**HAMED'S NOTICE OF PARTNERSHIP CLAIMS
AND OBJECTIONS TO YUSUF'S POST-JANUARY 1, 2012 ACCOUNTING**

On August 31, 2016, the Special Master notified the parties by email that by September 30, 2016, they must: (1) "file any objection or disputes any item in the [Yusuf post-2012] accounting" and that (2) "any partner who has a monetary or property claim against the partnership or a partner must file such claim in writing," stating:



I. **Objections to the requirement that all 1986-2012 partnership claims be filed now.**



This case breaks neatly into two time periods based upon Step 4 of this Court's January 7, 2015, *Winding Up Order*,¹ as follows:

- The 1986 to January 1, 2012, time period – from the founding of the partnership to January 1, 2012 (for which no accounting at all has been submitted); and,
- the period from January 1, 2012 to the present (this being the only period for which an accounting, albeit insufficient, has been submitted).

While the Master ordered the parties to note their respective objections to "the Partnership Accounting," the only accounting that has been provided covers just the period from January 1, 2012, to the present. Thus, Plaintiff objects to having to detail all "partnership claims" from 1986 to 2012, *at this time*, for the following reasons:

1. As a *sine qua non* of final distribution of remaining partnership assets in dissolution, RUPA² first requires an accounting to which contests are then made. There has been no 1986-2012 accounting done yet. Thus, there has been no analysis of the value of the partnership shares with itemized statements of contributions, distribution and claims to which Hamed can respond. It is improper to make the non-accounting partner respond first or even simultaneously;



¹Step 4: Liquidation of Partnership Assets

The Liquidating Partner shall promptly confer with the Master and Hamed to inventory all non-Plaza Extra Stores Partnership assets, and to agree to and implement a plan to liquidate such assets, which shall result in the maximum recoverable payment for the Partnership. 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. The Liquidating Partner is ordered to submit an updated balance sheet to Hamed and to the Master without delay. (Emphasis added.)

² *Revised Uniform Partnership Act* ("RUPA") as enacted at 26 V.I.C. §§ 1 *et seq.*

2. Discovery was halted by the Order of this Court before the Plaintiff could complete discovery on the 1986-2012 claims;³
3. No notice was previously given that the 1986-2012 claims would have to be submitted at this time, prior to a partnership accounting – as Hamed was simply required to respond to the post-2012 accounting that has been submitted or that the Master would be involved in those claims;⁴
4. Disputed partnership claims and any factual issues involving statutes of limitations must be decided by a jury under the VI Supreme Court's ruling in the related case of *United Corporation v. Waheed Hamed*, 2016 WL 154893, at *7 (Jan. 12, 2016),⁵ and cannot either be decided summarily, or left to the Master rather than the Court without an agreement of the parties. Indeed, the Plaintiff has filed several outstanding motions, including the critical motion as to the statute of limitations that would obviate all pre-2007 claims;⁶ and

³ The claims from 1987 to January 1, 2012 require payment of more than \$19 million to Hamed plus interest, as detailed in Exhibit A. In addition, 26 V.I.C. § 5 provides: "If an obligation to pay interest arises under this chapter [RUPA] and the rate is not specified, the rate is that specified in Title 11, section 951, Virgin Islands Code." If Yusuf does not contest those claims, then no additional discovery is necessary.

⁴ Indeed, *Step 4* of the Court's *Winding Up Order* (cited above) explicitly limited Hamed's ability to address this 2012-present time period, stating "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.)

⁵ The V.I. Supreme Court has determined that any disputed statute of limitations issue that involves a question of fact, cannot be decided summarily – and *must* be heard by a jury:

... the nonmoving party cannot be required to definitively prove its case at summary judgment, or to even provide the most convincing evidence supporting its case. **Its only burden is to submit sufficient evidence to create a genuine issue of material fact for a jury to resolve.** (Emphasis added.)

⁶ On April 27, 2015, this Court issued an Order allowing the Liquidating Partner to distribute \$3,999,679.73 of the partnership's funds to the Liquidating Partner's corporation – United Corporation -- as back rent. This Order was predicated solely on factual determinations by the Court regarding the applicable V.I. statute of limitations. In light of the recent decision of the V.I. Supreme Court specifically prohibiting exactly this type of factual determinations regarding statutes of limitations, that must be submitted to a jury.

Plaintiff also has substantial claims related to the non-equitable, non-accounting issues such as breach of duty and wrongful dissolution of the partnership by Fathi. The attempt by Yusuf/United to convert all of the partnership was abject, unadulterated conversion – and additional, non-accounting monetary damages were pleaded. Hamed believes that these are *a priori* fact issues, and must be decided by a trier of fact before final distribution of the remaining assets can take place. The Amended Complaint lists a number of non-accounting damages – and specifically asked, at item 7 of relief, for “[a]n award of compensatory damages against the defendants.” Fees for the litigation occasioned by the breach of the partnership agreement and for wrongful dissolution are not accounting damages and require a jury. See, e.g., *Meyer v. Christie*, No. 07-2230-CM, 2009 WL 3294001, at *1 (D. Kan. Oct. 13, 2009); same on appeal *Meyer v. Christie*, 634 F.3d 1152, 1160–61, 2011 WL 873437 (10th Cir. 2011 same on remand *State Farm Fire & Cas. Co. v. Christie*, No. 10-CV-2699, 2015 WL 751808, at *3 (D. Kan. Feb. 23, 2015); see also *Cratte v. Estabrook*, No. 1 CA-CV 09-0239, 2010 WL 2773372, at *3 (Ariz. Ct. App. July 13, 2010); and *Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 148 Idaho 479, 489, 224 P.3d 1068, 1078, 2009 WL 5252829 (2009). Paragraph 38 seeks these additional, non-accounting damages:

38. Mohammed Hamed is also entitled to compensatory damages for all financial losses inflicted by Yusuf on the Partnership and /or his partnership interest. . . .

Similarly, paragraph 41 alleges breach of duty – also a factual issue:

41. United was at the time of the formation of the Partnership, controlled by Yusuf, who, as the partner making such financial arrangements for the Partnership, committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under an agreement or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds -- which breaches the agreement and the duties due to the Partnership and his Partner.

Indeed, the critical issue here is that prior to the final distribution of remaining partnership assets, RUPA requires that an actual, detailed accounting for the period from 1986 to January 1, 2012 either be done.

Moreover, if that accounting is impossible, the presumptions with regard to any accounting deficiencies requires disputed issues in such an accounting be



decided for the benefit of the non-accounting partner. See, *Frett v. Benjamin*, 2 V.I. 516, 524, 187 F.2d 898, 901 (3d Cir. 1951) (decided when the *Uniform Partnership Act* was in effect here, that in a U.S. Virgin Islands partnership accounting "when accounts are so muddled as to defy straightening out, the court will have to resort to the best evidence available, and the partner to blame for the situation will be penalized by having discrepancies resolved against him") and see, e.g., *Laurence v. Flashner Medical Partnership*, 206 Ill.App.3d 777 (1990).

Hamed believes it is clear that because of the state of the partnership records, Yusuf's acts and his failures to act, no such 1986-2012 accounting is even arguably possible.⁷ In *Laurence v. Flashner*, the court stated the general rule in rejecting an "accounting" similar to the one suggested by Yusuf here:

The Uniform Partnership Act provides that a partner has a right to have an accounting as to his interest when he leaves the partnership. (Ill.Rev.Stat.1987, ch. 106½, par. 43.) **An accounting is a statement of receipts and disbursements which should show all of the detailed financial transactions of the business** including a listing of the original contributions and current assets and liabilities of the partnership. [citations omitted]. . . .

The evidence in the instant case does not reveal or suggest that **defendants' production of documents was anything more than an invitation to rummage through selected files. The record fails to establish what the boxes" of documents actually contained. Whether those boxes contained a list of all receipts and disbursements made, the original vouchers, bills, cancelled checks, and a listing of original contributions and current assets and liabilities is not known.** The record does not reveal that defendants prepared or commissioned audits or otherwise explained or documented the manner and method by which

⁷ See, *Expert Report of Lawrence Schoenbach*, attached as **Exhibit C**. This is a report done pursuant to the Court's scheduling order – as was the *Expert Report of David Jackson* filed on August 1, 2014. See also the extensive averments of the parties and detailed findings of this Court of record as to Yusuf's exclusive control of the business accounting recited in that Expert Report at footnote 7, pages 8-9.

TO: DUDLEY, TOPPER AND FEUERZEIG, LLP

**RE: MOHAMMAD HAMED V FATHI YUSUF AND UNITED
CORPORATION CIVIL NO. SX-12-CV-370**

**REPORT OF HISTORICAL WITHDRAWALS AND
DISTRIBUTIONS OF THE PARTNERS AND PROPOSED
ALLOCATION TO EQUALIZE PARTNERSHIP
DISTRIBUTIONS**

AUGUST 31, 2016

BDO, Puerto Rico, PSC, a Puerto Rico Professional Services Corporation, and BDO USVI, LLC, a United States Virgin Island's limited liability company, are members of BDO International Limited, a UK company limited by guarantee, and form part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.

BDO



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to identify withdrawals from January 2013 to the date of this report. During this period Mr. John Gaffney (“Gaffney”), who had been engaged as the accountant of the Partnership as of January 1, 2013, was in-charge of the supermarkets accounting and a formalized partnership accounting process was put into place. We obtained information during this period and is included in our report but we adjusted all the transactions to avoid double counting with the information being provided by Gaffney.

Dudley requested that we also review the accounting of the Claims Reserve Account and the Liquidating Expenses Account, and the proposed distribution of the remaining funds and/or net assets of the Partnership pursuant to the Plan and Wind Up Order. The review included the Accounting, Combined Balance Sheets, and other financial information prepared by Gaffney and provided periodically with the Bi-Monthly Reports submitted to the Master overseeing the Liquidation Process and finalized in the last submission of financials as of August 31, 2016. The Partnership Accounting includes the accounts of Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park.

Any partnership withdrawals made prior to Gaffney’s appointment were not included in his accounting. Therefore, our work was aimed towards identifying withdrawals which could be construed to be Partnership distributions and to incorporate them into Gaffney’s accounting in order to provide an Adjusted Partnership Accounting.

This report only includes our conclusions related to the withdrawals/distributions from the Partnership and the available amount to be allocated per Partner to equalize the historical distributions.

2.2 Assumptions and Limitations

The analysis and conclusions included in this report are based on the information made available to us as of the date of this report. All information was provided by Dudley as submitted by Mr. Hamed and Defendants.² In the event that any other relevant information is provided, we shall evaluate it and amend our report, if necessary.

Our procedures do not constitute an audit, review, or compilation of the information provided and, accordingly, we do not express an opinion or provide any other form of assurance on the completeness or accuracy of the information. The use of the words “audit” and “review” throughout this document do not imply an audit or examination as used in the accounting profession. We make no further warranty, expressed or implied.

² Information was obtained from the following sources: (1) FBI files related to Criminal Case No. 2005-CR-0015, (2) documents produced by Mr. Hamed in the Case, and (3) documents produced by Defendants in the Case.

4.5 Limitations

Our report and the findings included herein have been impacted by the limitation of the information available in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

- Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993.
- Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.
- Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits.
- Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

4.6 Assumptions

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) were assumed to be partnership withdrawals/distributions. With regards to the Hamed family, Mohammad Hamed admitted during deposition testimony that his family's sole source of income was the monies they withdrew from the supermarkets.³²

The lifestyle analysis is supported by available information related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

³² Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED **Plaintiff**)
)
)
)
vs)
)
UNITED CORPORATION)
)
Defendant

CASE NO. SX-14-CV-0000287
SX-12-CV-0000370
ACTION FOR: DAMAGES - CIVIL

**NOTICE OF ENTRY OF
ORDER CONSOLIDATING
CASE WITH SX-12-CV-370**

TO: JOEL HOLT, ESQ.; CARL HARTMANN, ESQ.
GREGORY HODGES, ESQ.; NIZAR DEWOOD, ESQ.
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, ESQ.
HONORABLE EDGAR ROSS
(edgarrossjudge@hotmail.com)

Please take notice that on April 18, 2016 a(n) ORDER CONSOLIDATING
CASE WITH SX-12-CV-370 dated April 15, 2016 was entered by the Clerk in the
above-entitled matter.

Dated: April 18, 2016

Estrella H. George
Acting Clerk of the Court

IRIS D. CINTRON
COURT CLERK II



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 and Counterclaimants,

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

Case No.: SX-2012- CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

Case No.: SX-2014- CV-287

**ACTION FOR DAMAGES AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

ORDER

This matter is before the Court on the parties' Stipulation to Consolidate the above matters. Upon consideration of the matters before the Court, it is hereby

Ordered that Civil No. SX-2014-CV-287 is hereby consolidated with Civil No. SX-2012-CV-370.

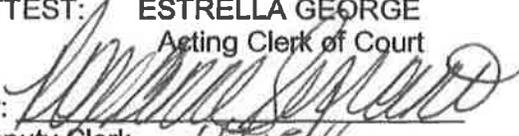
Dated:

April 15, 2016


HONORABLE DOUGLAS A. BRADY
Judge, Superior Court

ORDER
Page 2

ATTEST: ESTRELLA GEORGE
Acting Clerk of Court

By: 
Deputy Clerk

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

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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 and Counterclaimants,
vs.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

MOHAMMAD HAMED,

Plaintiff,
vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2012- CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

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THE SUPERIOR COURT
ST. CROIX

16 MAR 21 P4:42

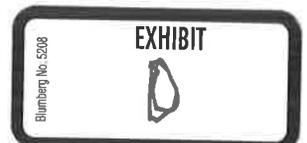
Case No.: SX-2014- CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

STIPULATION RE: CONSOLIDATION

The parties in each of the above captioned matters, by counsel, hereby stipulate to substantively consolidate these cases, since the claims asserted in the more recently filed case, SX-2014-CV-278 (assigned to Judge Molloy), may be treated as claims for resolution in the liquidation process of the older case, SX-2012-CV-370 (assigned to Judge Brady). As SX-2012-CV-370 is the oldest case, it is respectfully submitted that SX-2014-CV-278 should be consolidated with it for final disposition and assigned to Judge Brady. A proposed Order is attached.



It is further stipulated that this stipulation renders moot the motion for stay of discovery filed by Mohammad Hamed on February 26, 2016 in Civil No. SX-2014-CV-278.

It is further stipulated that this stipulation shall be filed in Civil No. SX-2012-CV-370 and Civil No. SX-2014-CV-278.

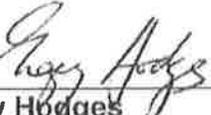
Dated: March 11, 2016



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Dated: March 10, 2016



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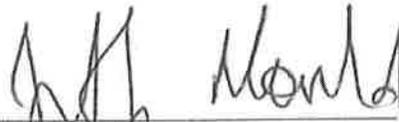
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Dated: March 18, 2016



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Dated: March 18, 2016



Jeffrey B. C. Moorhead
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**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 and Counterclaimants,

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

MOHAMMAD HAMED,

Plaintiff,
vs.

UNITED CORPORATION,

Defendant.

Case No.: SX-2012- CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

16
MAR 21
P 4:42

Case No.: SX-2014- CV-287

**ACTION FOR DAMAGES AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

STIPULATION RE: CONSOLIDATION

The parties in each of the above captioned matters, by counsel, hereby stipulate to substantively consolidate these cases, since the claims asserted in the more recently filed case, SX-2014-CV-287 (assigned to Judge Brady), may be treated as claims for resolution in the liquidation process of the older case, SX-2012-CV-370 (also assigned to Judge Brady). As SX-2012-CV-370 is the oldest case, it is respectfully submitted that SX-2014-CV-287 should be consolidated with it for final disposition. A proposed Order is attached.

It is further stipulated that this stipulation shall be filed in Civil No. SX-2012-CV-370 and Civil No. SX-2014-CV-287.

Dated: March 18, 2016



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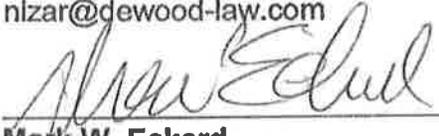
Dated: March 10, 2016



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Nizar A. DeWood
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nizar@dewood-law.com

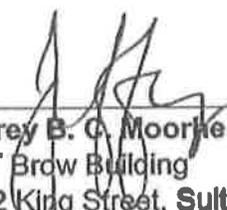
Dated: March 18, 2016



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Stipulation for Consolidation
Page 3

Dated: March 18, 2016



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SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED, by his)	CASE NO.:
authorized agent WALEED HAMED,)	
)	SX-2012-CV-0370
PLAINTIFF/COUNTERCLAIM DEFENDANT,)	
)	
v.)	
)	
FATHI YUSUF and)	
UNITED CORPORATION,)	
)	
DEFENDANTS/COUNTERCLAIMANTS,)	
)	
v.)	
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED,)	
and PLESSER ENTERPRISES, INC.,)	
)	
COUNTERCLAIM DEFENDANTS.)	

Tuesday, October 7, 2014

R.H. Amphlett Leader Justice Center
RR1 9000
Kingshill, St. Croix
U.S. Virgin Islands 00850

The above-entitled matter came on for a telephonic CIVIL STATUS CONFERENCE, a hearing before the Honorable Douglas A. Brady, Judge, in Courtroom Number 211, commencing at 11:46 a.m.

Randall Jon Belsvik, FCRR
Official Court Reporter
(340) 778-9750, Ext. 7152



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APPEARANCES

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APPEARANCES (Continued)

On behalf of Waleed Hamed, Waheed Hamed,
Mufeed Hamed and Hisham Hamed:

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On behalf of Plessen Enterprises, Inc.:

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Also present: Special Master Edgar Ross

PROCEEDINGS

(Telephonic proceedings commence at 11:46 a.m.)

THE CLERK: Mohammed Hamed, et al. versus Fathi Yusuf and United Corporation., et al.

THE COURT: Good morning, gentlemen.

MR. HOLT: Good morning, Your Honor.

MR. HODGES: Good morning.

MR. ECKARD: Good morning, Judge.

THE COURT: Could you put your appearances on the record, please?

MR. HOLT: Joel Holt and Carl Hartmann for the plaintiff.

MR. HODGES: Gregory Hodges and Nizar Dewood for the defendants/counterclaimants.

MR. ECKARD: Mark Eckard for counterclaim defendants.

MR. MOORHEAD: Good morning, Your Honor. Jeffrey Moorhead on behalf of Plessen Enterprises, Inc.

THE COURT: Very well. We are here for a status conference. Master Edgar Ross is with me in the courtroom.

The first thing I'd like to say is that I'm not sure how it happened, but we've got a matter scheduled for this coming Thursday, October 9, and there's no need to have that hearing as well as what we're doing today, so that scheduled matter will be canceled.

1 To let the parties know, I will be issuing an order
2 granting the plaintiff's motion for partial summary judgment
3 as to the existence of a partnership. That shouldn't be any
4 surprise to anyone, since that conceded issue has led us to
5 where we stand today, but just to get that on the record,
6 I'll go ahead and issue an order in that regard.

7 I'm sorry that it took until this morning to get you
8 the document that was sent out by e-mail this morning
9 entitled Order Soliciting Comments, Objections and
10 Recommendations. I assume you've had a chance to take a look
11 at it.

12 The only things I think that are of significance and
13 different than what has been presented would be the
14 identification of Mr. Yusuf as a liquidating partner. Along
15 those lines, it's recognized that, as United's principal and
16 president, there are issues of conflict potentially, but
17 since that role is going to be under the supervision and with
18 the participation of the Master, I am confident that, to the
19 extent that those issues are not able to be resolved, that
20 the Master will be able to make sure that there are no
21 problems arising from any conflict between the interests of
22 United and the role of Mr. Yusuf as liquidating partner.

23 Of course, the other matters of significance in
24 there primarily would be the proposed manner in which each of
25 the three stores will be distributed from the partnership,

1 and the bottom line in this order sends the parties to work
2 with the Master immediately so that you can have an
3 opportunity to flesh out your concerns, and then requires
4 that each side submit a written response to this proposal
5 within 14 days from today. Yes, from today.

6 In order to allow the parties to -- and again, when
7 I talk about "the parties," Mr. Eckard and Mr. Moorhead, it's
8 not out of lack of respect for you guys, or having no
9 interest in your participation, but it's really plaintiff and
10 defendant who are the prime shakers and the movers here, and
11 I believe that all of the issues -- I am hopeful that all of
12 the issues as to the clients of Mr. Eckard and Mr. Moorhead,
13 being secondary to the primary parties, that those hopefully
14 can be folded into whatever resolution is going to be
15 accomplished.

16 But to allow focus on working on the details of the
17 plan, I'm going to stay discovery for the time being, subject
18 to any parties' suggestion that there is a need to reopen
19 discovery for any particular purpose, and we can do that, and
20 also subject to the recommendation of the Master, who will
21 hear any party who has a suggestion that a certain component
22 of discovery needs to be addressed presently.

23 But to allow focus on trying to look at the big
24 picture, and seeing if we can come up with a plan for going
25 forward, I'm going to stay discovery otherwise.

1 As everybody has seen, we haven't been proactive in
 2 dealing with -- I lost count, but I would say it's accurate
 3 to say dozens of pending motions, I don't know how many, but
 4 there's a lot of motions out there that are ancillary to the
 5 primary focus -- are you still there, gentlemen?

6 MR. HOLT: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. HODGES: Yes, Your Honor.

9 THE COURT: Okay. We just had a power flash here.
 10 So similar to the discovery, we are going to
 11 continue to leave in abeyance those motions that are not
 12 primary, or that are not required to be addressed, to come up
 13 with a plan and a proposal for moving forward, and once
 14 again, of course subject to any party indicating that there
 15 is a need to address a particular motion, a particular issue,
 16 and subject as well to the recommendation of the Master.

17 The order that you received this morning requires
 18 that the parties meet together with the Master. And in
 19 addition to taking a look at the plan, we will be -- I know
 20 there are issues related to the rents that are due at Plaza
 21 East, and that would be an issue that the parties need to
 22 continue discussions with the Master concerning.

23 And the large portion of the work, it seems to me,
 24 that is going to be taking place, is identifying and
 25 cataloging partnership assets and forging a plan for the

1 liquidation or distribution of those assets. And all of that
2 can be done in the context of working with the Master
3 concerning putting together the nuts and bolts of the plan.

4 That's what I have this morning, and I'm willing
5 to -- I guess I should ask Judge Ross, is there anything
6 you'd like to add to that, Judge?

7 JUDGE ROSS: Nothing additional.

8 THE COURT: Can I hear from Mr. Hamed, what --

9 MR. HOLT: Yes, Your Honor, this is Joel Holt. Two
10 points, one simple one, and that is: You also have a status
11 conference set for Thanksgiving. I take it that is off?

12 THE COURT: We'll take it off.

13 MR. HOLT: All right. Secondly, I think while we're
14 all on the phone, maybe it might be helpful to try to set up
15 another meeting with Judge Ross, since he's going to be
16 taking over. I don't know if he wants to deal with this
17 after this, or if you want to talk about some time now.

18 THE COURT: Judge? Do you want to hear from
19 Judge Ross on that right now?

20 MR. HOLT: Yes, that would be fine.

21 JUDGE ROSS: Attorney Holt, this is Edgar Ross.
22 What I would suggest is that I get in touch with the
23 attorneys, and they find a suitable date and let me know,
24 because I'm always available. Some of you are private,
25 single practitioners, and I don't want to set a date that

1 interferes with your practice. So I would send you a notice
2 either today or tomorrow, asking you when you would like to
3 meet.

4 MR. HOLT: Okay. I think that's really all I have.
5 The parties did actually agree to a new scheduling order, but
6 I guess if you're suspending that too, that's a moot issue at
7 this point. So, Greg, I'll turn the floor -- Your Honor,
8 that's it for Hamed.

9 THE COURT: Thank you.

10 MR. HODGES: Thank you, Your Honor. This is Greg
11 Hodges. I really don't have anything to add. Obviously, I
12 think we'll need to review your order with our respective
13 clients, and get together with Attorney Holt and Judge Ross;
14 perhaps Attorney Holt initially, and then setting up a
15 meeting with Judge Ross at his convenience.

16 THE COURT: Okay, very good. And I -- you all
17 are -- I appreciate the degree to which everyone is willing
18 to accommodate each other, but now we do have a trial date of
19 December 1, for what that's worth, and I want to continue to
20 keep that date alive, and so I don't want to have us sitting
21 on these matters.

22 You can see in this order that you received this
23 morning, it requires comments within 14 days. I'd like to
24 try to stick to that, and that -- so that's going to
25 encourage you to get together with Judge Ross as soon as

1 you're able to do so. And as Judge Ross has said, he will
2 make himself available, and I'll just leave it to you to work
3 out those details.

4 MR. HOLT: All right, Your Honor. Thank you.

5 MR. HODGES: Your Honor, this is Greg Hodges. I
6 don't know if Judge Ross has had an opportunity to share with
7 you, but one of the unfortunately few things that Attorney
8 Holt and I agreed on recently was an extension of the
9 discovery period, the factual discovery period through
10 December 15, the expert initial report period until January
11 30, the rebuttal report until March 2nd I believe, and the
12 close of expert discovery until April 6. That was based on
13 the understanding that the trial date of December 1 was not
14 realistic under the circumstances.

15 Obviously, we don't control your docket, and those
16 were just suggestions that we were prepared to submit to the
17 Court, but I would respectfully submit that the, you know --
18 given the stay of discovery that you've talked about in this
19 conference, and the need for further discovery, that those
20 agreed dates ought to be favorably considered by the Court.

21 THE COURT: Has that been filed?

22 MR. HOLT: No.

23 MR. HODGES: I'm sorry?

24 MR. HOLT: No, we reached that agreement this
25 morning.

1 THE COURT: Well, why don't we -- I mean, I'm
2 amenable -- everybody has known for quite some time that
3 trial on December 1 is not realistic, but my interest here is
4 not so much doing anything other than trying to maintain
5 focus on the big picture and the end game, as opposed to
6 filling in the gaps along the sidelines.

7 It's also my intention not to stay discovery, with
8 the idea that this is going to prolong things. To the
9 contrary, the thinking is, is that if we can focus on the end
10 result, then perhaps some of the issues that are deemed
11 important now, and some of the discovery that's deemed
12 necessary now, may turn out not to be necessary.

13 As I said before, I'm open to any recommendation
14 from the Master, or motion from the parties, that the stay of
15 discovery is counterproductive, but, for the time being, at
16 least to give you all the opportunity to meet with Judge Ross
17 presently and the opportunity to get a response on the
18 proposed structure of the plan. For at least that period of
19 time, the discovery will be stayed. And as I said, I'm open
20 for discussion, suggestions as to how and if and when it
21 needs to be revisited.

22 Is there anything from Attorney Eckard or Attorney
23 Moorhead?

24 MR. ECKARD: Not from Attorney Eckard, Your Honor.

25 MR. MOORHEAD: No, Your Honor.

1 THE COURT: Very well. Attorney Holt, Attorney
2 Hodges, anything else we should be accomplishing this
3 morning?

4 MR. HOLT: No, Your Honor.

5 MR. HODGES: I don't think so, Your Honor. Thank
6 you for your time.

7 THE COURT: Okay, gentlemen. Thank you very much.
8 I appreciate your time this morning and look forward to
9 hearing from you shortly, and look forward to hearing good
10 reports about your meetings with Judge Ross.

11 That will conclude what we're going to do this
12 morning. Thank you.

13 MR. HOLT: Thank you, Your Honor.

14 MR. HODGES: Thank you, Your Honor.

15 (Proceedings conclude at 12:05)
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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	CIVIL NO. <u>SX-12-CV-370</u>
)	
Plaintiff/Counterclaim Defendant,)	ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF
)	
vs.)	
)	JURY TRIAL DEMANDED
FATHI YUSUF and UNITED CORPORATION ,)	
)	
Defendants/Counterclaimants,)	
)	
vs.)	
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants)	
)	

**EMERGENCY MOTION TO QUASH SUBPOENAS, STAY ENFORCEMENT OF OR
LIMIT THE SCOPE OF SUBPOENAS**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, pursuant to Super. Ct. R. 11(c), respectfully move this Court on an emergency basis to enter an order quashing two (2) subpoenas improperly issued to two banking institutions on May 31, 2016 or, in the alternative, to limit the scope of the subpoenas.

FACTUAL BACKGROUND

1. Discovery in this case has been stayed since October 7, 2014. On that date, during a telephonic hearing, this Court explained that discovery was stayed to allow the liquidation process of the partnership between Yusuf and Mohammad Hamed (“Hamed”)¹ (the “Partnership”) to proceed.



¹ Yusuf filed a Statement Noting the Death of Mohammed Hamed on June 22, 2016, which provided notice of Hamed's death on June 16, 2016. As a result of such death, any power of attorney given by Hamed to Waleed Hamed terminated. See V.I. Code Ann. tit. 15, §1265(a). To date, no motion for substitution of a representative of the estate of Hamed has been made.

2. The Court advised that the stay of discovery would allow the parties to “focus on working on the details of the plan” for winding up the Partnership. *See Exhibit A* – October 7, 2014 Hearing Transcript; 6:16-17. The Court acknowledged that discovery may be needed at some later point, after the initial liquidation process was put in place. The Court explained its hope that “perhaps some of the issues that are deemed important now, and some of the discovery that's deemed necessary now, may turn out not to be necessary.” *See Exhibit A*, 11:10-12.

Likewise, the Court acknowledged that there were a number of pending motions that the Court was holding in abeyance pending the parties' efforts to proceed with the liquidation process that will be addressed at a later point assuming they, too, are not otherwise rendered moot.

3. The Court also held that if the parties deemed discovery to be necessary in the interim, then, in that event, the process would be to file a motion explaining why a stay was counterproductive and to explain the “need to reopen discovery for any particular purpose” upon which the Court could then rule, following a recommendation by the Master. *See Exhibit A*, 6:18-19 and 11:13-19.

4. At no point has Hamed ever filed such a motion explaining the need for any specific discovery or requesting the Court to re-open discovery for any “particular purpose.”

5. Instead, Hamed has circumvented the stay imposed by the Court by serving the subpoenas, attached as **Exhibit B**, upon the Bank of Nova Scotia and Banco Popular de Puerto Rico (collectively, the “Subpoenas”). The Subpoenas seek, among an extraordinarily broad range of information, documents relating to United's tenant accounts as well as information relating to Plessen Enterprises, Inc. (“Plessen”), neither of which are related to the Partnership or

CONCLUSION

For all the foregoing reasons, Defendants respectfully request this Court to enter an order quashing the Subpoenas entirely. In the alternative, the Defendants request that the Subpoenas be modified to limit the information sought to only that information directly relating to Partnership liquidation and wind-up, which does not include information relating to Plessen or United's tenant account.

Dated: June 29, 2016

By:

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Attorneys for Fathi Yusuf and United Corporation

-----Original Message-----

From: Edgar Ross <edgarrossjudge@hotmail.com>

To: Joel Holt <holtvi@aol.com>

Sent: Thu, Feb 25, 2016 1:24 pm

Subject: RE: Plaza

There is no conclusive presumption of correctness . I indicated and hold firm to what I said to you about challenging any decision I make. I adopted this process to speed up payments and the liquifation process. Adjustments can be made to partners' draws at a later date if necessary. I do not consult with nor seek the approval of any attorney before I make a decision. You have the right to seek reconsideration of any decision I make.

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

----- Original message -----

From: Joel Holt <holtvi@aol.com>

Date: 02/25/2016 12:24 PM (GMT-04:00)

To: edgarrossjudge@hotmail.com

Cc:

Subject: Plaza

Judge Ross-yesterday I received the opposition to my objection to the Liquidating Partner's Six Bi-Monthly Report. That pleading contained several surprises that I want to raise with you.

At the outset, I should note that their pleading included several checks that I had asked John Gaffney to produce weeks ago, but never received, The fact that those checks are readily accessible to Mr. Yusuf, but not my client, highlight the accounting problem we have discussed. However, that is not the point I want to address in this email, as I will discuss later it in response to your email sent yesterday.

The pleading as filed suggests that since you signed several specific checks, which I have attached to this email, these are resolved claims, not subject to further review. It was my understanding from conversations with you that this is not the case, but I guess I need clarification from you on this point.

For instance, there is a check for \$79,009.37 payable to the Tutu Park landlord for 2012 and 2013 real estate taxes that my client does not dispute. However, there is then a check for \$89,442.92 payable to United Corporation (marked #1) with an email from John Gaffney (also attached) **that I had never seen**, explaining that somehow this is additional rent owed United "Since Plaza East rent is based upon St. Thomas rent" Aside from the fact that I do not even understand the calculations attached to that email that supposedly explains how this "additional rent" was calculated, my client completely disagrees with the statement that the "Plaza East rent is based in the St. Thomas rent," thus warranting a new rent payment. Indeed, it is contrary to Judge Brady's April 27, 2015, opinion that determined the rent due for this time period and then

EXHIBIT
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ordered it to be paid, which did not include any such finding, which I am glad to send it you want to see it.

My first question is whether this payment of \$89,442.92 to United is now a resolved claim or is it still subject to my client's challenge that it is not due?

As another example, there is a check for \$43,069.56 payable to the Tutu Park landlord for 2014 real estate taxes that my client does not dispute. However, there is then a check for \$46,990.45 payable to United Corporation (marked #2). This one does not have an email from John Gaffney explaining this payment, but presumably it is also being claimed as additional rent owed United for 2014, which my client also completely disagrees with.

My second question is whether this payment of \$46,990.92 to United is also now a resolved claim or is it still subject to my client's challenge that it is not due?

Likewise, there is a check for \$41,462.28 payable to the Tutu Park landlord for 2014-2015 percentage rent, that my client does not dispute, even though the partnership only owed 50% of this amount. However, there is then a check for \$41,462.28 payable to Fahti Yusuf (marked #3). This one does not have an email from John Gaffney explaining this payment, so I am not sure what the justification is for this check.

My third question is whether this payment of \$41,462.28 to United is also now a resolved claim or is it still subject to my client's challenge that it is not due?

Finally, there is a check to DTF for \$57,605. As you know, you sent me this bill on December 24th. We then discussed this bill. My understanding was that this bill would not be paid until I had time to respond to it, which understanding is set forth in my January 23rd email to you, which begins with me thanking you for giving me time to respond to this issue. I then question the bill, **including the reasonableness of the amount of the bill**. However, I apparently misunderstood you, as I now see this check (marked #4) was paid to DTF on January 6th.

My fourth question is whether the amount of this payment to DTF is also now a resolved claim or is the amount still subject to my client's challenge?

In summary, are claims you allowed to be paid now "FINAL" – or are they still subject to being challenged in the claims process without any presumption of correctness being created by your signing the checks?

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