

**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

**HAMED'S RESPONSE TO YUSUF'S SUPPLEMENTAL BRIEFING RE
THREE MOTIONS ADDRESSED AT THE MARCH 6TH HEARING**

Yusuf filed a separate supplemental brief regarding the "other issues" raised at the March 6th hearing, addressing three issues—the jury trial demand, striking the Plaintiff's objections/claims and responding to the Plaintiff's Proposed Scheduling Order filed on March 20th. The Plaintiff's response will be brief, with the first two issues discussed together since they are really related to the same point—who should be the trier of fact? The third issue—where to go from here—will be addressed last.

I. The jury trial issue—who should the trier of fact be?

Because the Plaintiff has briefed this issue several times in response to the specific arguments now being raised in Yusuf's March 21st filing, those arguments will not be repeated here. Instead, the Plaintiff will rely on his past filings, summarized in his October 18, 2016, filing -- a copy of which is attached hereto as **Exhibit 1**.

However, one important clarification needs to be made. While Yusuf repeatedly asserts his "accounting" claim should not be heard by a jury, it is undisputed that a final partnership accounting **has not and cannot be done** based on the record in this case:

- Gaffney testified that the records prior to 2012 were a mess (Hearing Ex. 40), which explains why *his* final partnership "true up" between the two partners only go forward from 2013, as submitted to this Court on November 16, 2015. See **Exhibit 2**.
- David Jackson also submitted a report (Hearing Ex. 39), and testimony at the March 6th hearing explaining why no partnership accounting could be done because of the lack of records. See Hearing Tr. 207-210. Lawrence Schoenbach submitted a report (Hearing Ex. 34) and testified to this point as well. See Hearing Tr. 162-164.
- Even BDO states that their report was based on incomplete records (Hearing Ex. 3 at p. 22), which was not an "audit, review or compilation" (*Id.* p. 3), also confirming that a proper accounting could not be done.¹

Thus, the assertion that the continued proceedings in this case involve a partnership accounting is simply not true—it is undisputed that a partnership accounting could not be done prior to 2013. As there is *no evidence that contradicts this point*, **what remains to be decided are nothing more than the September 30th claims filed by the parties.**

¹ Yusuf asserted BDO's calculation as a **separate claim**, not as an accounting, along with Yusuf's other claims against Hamed. See Hearing Ex. 23. Moreover, as noted in the "BDO filing" of today's date, that report should be stricken under Rule 702 as well.

In any event, as noted in the arguments set forth in **Exhibit 1**, it would be an error to take the remaining claims between the parties away from the jury. Instead, this Court should proceed like the court did in *Thompson v. Coughlin*, 329 Or. 630, 997 P.2d 191 (Or. 2000), which held that while the initial complaint had sought damages as well as an accounting, the case had really evolved into a legal action for damages, not an accounting, concluding:

Consequently, because the relief sought in the present case is a judgment for a specified sum of money determinable without any accounting, the need for an accounting is obviated. We conclude that the nature of plaintiff's actual claim for relief is legal and that the trial court erred in denying defendant's demand for a jury trial. We are unable to find any basis for equitable jurisdiction under these circumstances. *Id.* at p. 640, 195.

The same analysis applies here, as all that is left between the partners are their respective claims. See, e.g., Yusuf's claims listed in Hearing Ex. 23.²

Additionally, there are multiple claims asserted by each party **against various third parties in this case**, such as United (which has claims asserted against it as well as claims asserted by it). These third-party claims require a jury since a jury demand was timely made as the them, **which is not part of the partnership dissolution**.³

Finally, the V.I. Supreme Court has already held that **a jury is required to determine the veracity of Yusuf's claim that he did not "discover" some claims he**

² Yusuf's list also list claims by United against the partnership. Once the SOL motion is decided, many of the claims listed by both parties will disappear, greatly reducing what is left for trial.

³ For example, United's claim that the partnership owes it even more rent, including reimbursement for taxes and insurance incurred by the shopping center, is such a third-party claim. Indeed, Yusuf's claims against Wally Hamed for allegedly taking funds from the business in 1993 is a claim unrelated to any dispute between the partners. Likewise, Hamed's claim against United for removing \$2.7 million in 2012 to buy more land in its name, which started this suit, is such a third party claim that has to be tried by a jury.

is asserting against Wally Hamed until 2010. See, *United Corporation v. Waheed Hamed*, 2016 WL 154893, at *7 (Jan. 12, 2016). Of course, Wally Hamed wants that “discovery” issue resolved by a jury as well. Thus, a jury is required for at least this fact issue in addition to the third-party claims.

Finally, even if some of the remaining claims were equitable, as the U.S. Supreme Court further held in *Ross v. Bernhard*, 396 U.S. 531 (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.

Thus, it is respectfully submitted that the claims in this case should be tried by a jury.⁴

II. Plaintiff's Proposed Scheduling Order

Yusuf objects to the scheduling order essentially for two reasons. First, Yusuf asserts that this matter should be heard by a master or the Court, not a jury, so a scheduling order like the one proposed by the Plaintiff is not needed. Second, Yusuf asserts that Gaffney has done all that he was required to do in providing the partnership accounting for the time period between 2013 and 2017, so nothing else need be done.

As for the first issue, that point was addressed above. As for the second issue, Yusuf's assertion is nothing more than the Liquidating Partner's continuing “bully” tactics, abusing his role as the Liquidating Partner. Indeed, while Yusuf mocked counsel's declaration on the problem encountered in getting information from Gaffney, no counter declaration was filed—evidence trumps mockery every time.

⁴ Once it is established that a jury trial is warranted, the issue related to where Hamed should have filed his claims is moot. Moreover, a record of all claims needs to be documented in this Court for appellate reasons as well.

In this regard, John Gaffney was paid \$220,000 from partnership funds (see **Exhibit 3**), yet he was continually instructed not to cooperate with the non-liquidating partner, which is well documented. Indeed, he even refused to supply requested information regarding his final report issued earlier this year. See **Exhibit 3** attached.

However, **the point is not to belabor the past, but to find the best way to move this case forward as expeditiously as possible.** As explained in the Notice of Filing the Scheduling Order, an order directing Gaffney to meet with the Plaintiff's CPAs and paralegals will greatly shorten the claims going forward. Moreover, it would not be productive to try to do this in a deposition by counsel, as this is accounting work.

Thus, entering an order that leads to these issues being addressed first, before formal discovery commences, is the most efficient use of everyone's time, which will also reduce the time the Court needs to devote to this case.

III. Conclusion

In summary, it is respectfully requested that the Court enter the Scheduling Order submitted by the Plaintiff. Once a scheduling order is entered and the SOL motion is decided, this case will become quite manageable so that it can be easily tried by a jury.

Dated: March 27, 2017



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
T:(340) 773-8709 /F: (340) 773-8677

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
% edgarrossjudge@hotmail.com

Gregory H. Hodges
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

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

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'J B C Moorhead'.

EXHIBIT 1

**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

**HAMED'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE
HAMED'S "RESPONSE RE JURY ISSUES"**

Because Defendants recently began suggesting in emails sent to the Special Master that none of the remaining issues were triable by a jury,¹ Hamed filed a formal *Response* to those assertions on September 27, 2016. That "Response Re Jury Issues"

¹ That email chain was attached as Exhibit 1 to Plaintiff's September 27th filing.



explained why there are issues still triable by a jury remaining in this case and why the Court is required to submit them to a jury.

Defendants have now moved to strike that filing, again asserting that the Plaintiff has no right to a jury on any of the remaining issues, **despite the fact that the Defendants do not deny that a timely request for a jury on issues at law was made at the outset of this case, and the V.I. Supreme Court has recently made it clear that other issues raised here *must* go to the jury.**

Therefore, for the reasons set forth herein, it is respectfully submitted that this motion should be denied and all factual issues in dispute should proceed to a jury trial.

I. The Facts – The Plaintiff was not out of time in filing his Response.

On September 29, 2014, Yusuf filed his motion to strike Hamed's original *Jury Demand* in this case. However, just a week later, **before Hamed's opposition was due**, the Court verbally ordered, in a conference call, that the "pending motions" then before the Court were being "held in abeyance" until the dissolution process had proceeded. This order as to the stay of the pending motions practice was accurately described by Defendant's counsel, Gregory Hodges, in a recent filing with the Court:²

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. . .to proceed.

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

² See pages 1-2 of Yusuf's *Emergency Motions to Quash Subpoenas, Stay Enforcement of or Limit the Scope of Subpoenas*, dated June 29, 2016. Attached as **Exhibit 1**.

some of the discovery that's deemed necessary now, may turn out not to be necessary." See Exhibit A, 11:10-12.

This same paragraph, authored by defense counsel, then continued, *expressly* acknowledging as follows regarding all motions. (See **Exhibit 1**):

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. (Emphasis added.)

Plaintiff's counsel understood the procedural situation to be *exactly* what Hodges described. If it was not the Court's intent that the then pending motions practice be placed in abeyance, "pending the parties' efforts to proceed with the liquidation process" and that they would be "addressed at a later point" -- that was not either side's understanding.³ There can be no doubt this Court held all motions in abeyance, including Defendants' September 29, 2014, *Motion To Strike Jury Demand*, so that no response was allowed.

However, after the Special Master signaled the impending end of this phase of the dissolution process by email on August 31, 2016, defense counsel began forcefully raising *this jury issue* again. It was clear the dissolution process had not rendered this issue moot. As such, Hamed filed a "Response Re Jury Issues" to set forth the correct

³ Similarly, Yusuf's counsel statement that he understood that all such motions would resume and "be addressed at a later point, assuming they too were not otherwise rendered moot," was also the same understanding counsel for the Plaintiff had. Moreover, if this was not the Court's intent, this was clearly a mutual and understandable error. As no order has issued and all discovery and other non-dissolution practice has been in abeyance during the dissolution efforts, there certainly has been no prejudice.

law on this issue. No motion to allow a late filing was required pursuant to this Court's prior order holding all motions in abeyance.

Thus, the Plaintiff's "Response Re Jury Issues" that the Defendants seeks to strike is neither out-of-time nor without merit.

II. The Right to a Jury Trial cannot be summarily waived.

Even if the Plaintiff's filing were somehow deemed untimely, Defendants' argument that a properly demanded jury trial is waived if a response to a motion to strike the initial demand is late is also without merit.⁴ The granting of the motion to strike would effectively result in a waiver of the Plaintiff's right to a jury trial, which was properly demanded in both the initial Complaint and Amended Complaint.

Such a waiver cannot be allowed for several reasons. Indeed, as will be noted, **the Defendants have not cited one case which reached such a Draconian result!**

1. *Procedural Waivers of Jury Demands to be "scrutinized with the utmost care": Yusuf is in Error Regarding the Authority Cited as to Waiver of Right to Jury*

In a contemporaneous filing,⁵ Defendants cite several cases for the proposition that a jury right can be waived by mere late filing of the opposition to a motion.

⁴ To the contrary, even when an opposition memorandum is not filed, the Court CANNOT deem the motion conceded, as it still must address the merits of the motion despite the lack of any opposition. *See, e.g., Hodge v. Virgin Islands Water and Power Authority*, 55 V.I. 460, 463–64, 2011 WL 6936480, at *2 (V.I.Super., 2011)(Court must address motion on merits even if no opposition or a belated opposition is filed); *People of the Virgin Islands v. Rivera*, 54 V.I. 116, 125, 2010 WL 4723455, at *4 (V.I.Super., 2010)(Motion to deem unopposed motion conceded must be denied, as motions must be addressed on their merits even when no opposition is filed).

⁵ Indeed, Defendants have already fully responded to Hamed's Response. They filed a *Reply* to this "Response Re Jury Issues" in a separate pleading at the same time it moved to strike that "Response."

However, **none of the cases cited do deal with that topic** – they all deal with waiver by failure to make an initial demand for a jury until very late in the trial.⁶ It is VERY useful to review exactly what Yusuf attempts to 'suggest' to the court in that contemporaneous filing at p. 2 – as it highlights why they are also wrong here:

As indicated above and argued elsewhere, the Court should reject Plaintiffs response out of hand.² Like other constitutional rights, a party may waive his or her right to a jury trial, in a number of different ways. See Fed. R. Civ. P. 38(d) ("A party waives a jury trial unless its demand is **properly served and filed.**"); *Burgess v. Hendley*, 26 V.I. 173, 175 (Terr. Ct. 1991)(waiver not rescinded by **belated claim** of inadvertence or change of "trial strategy"). (Emphasis added.)

Both authorities cited relate *solely* to the failure to demand a jury in the initial complaint. On its face, Rule 38 deals with failure to *initially* file the demand and serve it – **but that clearly did not happen here.**

Burgess v. Hendley, referenced in the above quote, is the exactly the same thing. The action was filed in 1990 without a jury demand. The case was then reassigned, a first amended complaint filed, answers were filed, a pre-trial conference was held and discovery set. Then the case was again re-assigned, that judge recused himself, a further pre-trial was held – and then after a year had passed, in 1991, a jury demand was first made. *Id.* at 26 V.I. 173, 173–74, 1991 WL 11818252, at *1 (Terr. V.I. Aug. 16, 1991).⁷ No cases cited provide any support for denial of a jury trial because of a filing

⁶ As noted, there is no dispute that the Plaintiff included a proper demand for a jury trial in the initial and amended complaints, which distinguishes all of the cases cited by the Defendants, as will be discussed herein.

⁷ It should be noted that *even when* a jury trial is not demanded initially, it is routinely allowed at the discretion of the court – because of the critical, constitutional importance of the right to trial by jury. See, e.g., *JnLouis v. Pueblo Int'l, Inc.*, No. 1642/1981, 1983 WL 952738, at *1 (Terr. V.I. June 7, 1983).

limit on a motion to strike. Likewise, aside from substantive jury waivers that are contained in contractual agreements,⁸ Hamed cannot locate a single case where the Court granted a procedural waiver of the right to jury simply because of a late response if there was a proper request at the outset of the case.

Here you have the clear factual understanding of the parties as to the Court's abeyance of motions. In addition, *after the filing of Defendants' motion to strike the jury demand*, the V.I. Supreme Court changed the legal understanding of the requirements for a jury trial when factual matters were raised in regard to statutes of limitations. *United Corporation v. Waheed Hamed*, 2016 WL 154893, at *7 (Jan. 12, 2016). That

The court ought to approach each application under Rule 39(b) with an open mind and an eye to the factual situation in that particular case, rather than with a fixed policy against granting the application or even a preconceived notion that applications of this kind are usually to be denied.

9 C. Wright & A. Miller, *Federal Practice and Procedure: Civil*, Section 2334 at 116 (1971). **Furthermore, the following statement should be kept in mind: "Maintenance of the jury as a fact-finding 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."** *Collins v. Government of the Virgin Islands*, 5 V.I. 622, 632, 366 F.2d 279, 284 (3d Cir. 1966) (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501 (1959)). (Emphasis added.)

⁸ See, e.g., *Donnelly v. Branch Banking & Trust Co.*, 91 F. Supp. 3d 683, 701, 2015 WL 926022 (D. Md. 2015) (Waiver of "plaintiffs' jury demand, relying on jury trial waivers contained in the original Guaranty Agreement") and see, e.g. *Regions Bank v. Kaplan*, No. 8:12-CV-1837-T-17MAP, 2014 WL 4854304, at *2 (M.D. Fla. Sept. 29, 2014) ("Plaintiff Kaplan is a sophisticated businessman. The terms of the Deposit Agreement are not negotiable, but the Kaplan Parties were not obliged to open accounts at Regions Bank. There is no allegation that the Kaplan Parties were denied an opportunity to consult counsel, if they wished to do so.").

Court made it clear, in a related case, that there is a significantly heightened right to jury review of the factual basis of such defenses.

In short, there is the terse admonition in our case law that: "Maintenance of the jury as a fact-finding 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" as discussed in *JnLouis v. Pueblo Int'l, Inc.* As such, even if the Plaintiff's reply to the motion to strike had been untimely, the Court would still have to deny the motion to strike – especially where the law has changed, no order has issued and the substantive portion of the case has been on hold pending the dissolution proceedings.

III. The Plaintiff is entitled to a jury trial on all legal issues and, thus, should be given one on all equitable issues.

In his *Response Re Jury Issues*, Hamed raised one of the central issues here, recognized by the V.I. Supreme Court recently in a related case, that a jury ***must*** hear factually based statutory limitations defenses such as the ones presented here:

. . . 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.)

United Corporation v. Waheed Hamed, 2016 WL 154893, at *7 (Jan. 12, 2016). This was obviously not included in Defendants' original motion and thus was not before the Court, as that decision was rendered after the September 29, 2014, motion to strike.

That case held, as a pure matter of law, that such factual issues must be decided by a jury where, as here, there are clearly contested facts surrounding the issues in

question. Following that V.I Supreme Court decision, such factual questions *cannot* either be (1) decided summarily, or (2) left to the Master rather than the Court without an agreement of the parties. Indeed, Plaintiff has filed several outstanding motions and other papers raising this point.⁹ Thus, a jury must be empaneled.

Recognizing this fact, Defendants disingenuously try to assert that the Plaintiff *only* sought equitable relief in the Complaint and Amended Complaint. That argument is stunningly incorrect. The *Amended Complaint* specifically demanded a trial by jury "as to all issues triable by a jury." It then listed a number of specific damages at law – the removal and tortious conversion of the \$2.7 million in partnership funds by a third party (United) (¶29), as well as the value of land taken by United (¶28(c)).¹⁰ These are purely damage claims, which are triable by a jury as noted in the cases cited in the "Response Re Jury Issues," which are incorporated herein by reference. In fact, the theft of the \$2.7 million by a third party was the precipitating injury and was the primary initial claim. While the Plaintiff also sought equitable relief regarding the structure of the partnership, there can be no doubt that claims at law were clearly asserted, as set forth in ¶38 of the Amended Complaint:

⁹ Indeed, in light of this new, related decision obtained by one of the Defendants in this case (United) against one of the other parties here (Willie Hamed), arising from the identical set of facts, this Court's ruling regarding the back payment of rent to United on April 27, 2015, predicated on findings of fact, is now erroneous and should, *sua sponte*, be vacated by this Court.

¹⁰ After discovery began in this case, additional claims arose, like the conversion of legal fees previously mentioned in this Court's TRO opinion. See *Hamed v Yusuf*, 56 V.I. 117, 137, 2013 WL 1846506 at *6 (2013). These fees reached a total of \$504,591 of United's attorneys fees being paid before the TRO finally stopped the conversion of more funds.

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

Moreover, in citing the wrong line of cases – Defendants missed the clear, controlling law as 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, 6 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).

As the U.S. Supreme Court further held in *Ross v. Bernhard*, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (1970), the holdings of *Beacon Theatres* and *Dairy Queen* provide that:

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.

These cases share the common theme in the references to procedural rules. In *Beacon Theatres*, Rule 13 authorized assertion of the legal counterclaim. In *Dairy Queen*, Rule 18 permitted joinder of all claims in one complaint. Thus, if the issues related to both the legal and equitable claims can be resolved in one lawsuit, then the right to a jury trial attendant to the legal claims will prevail.

Finally, while the Defendants try to ignore this fact, there is no dispute that United Corporation, a named Defendant, is not a partner, so that those damage claims cannot be part of the RUPA accounting and must be tried against United at law.

IV. Conclusion

Plaintiff's *Response Re Demand for Jury* was not untimely filed, nor can a properly demanded jury demand be waived by some subsequent procedural claim of waiver. Indeed, the V.I. Supreme Court, thanks to United Corporation, made it clear that factual issues are to be resolved by a jury.

Thus, the motion to strike should be denied, with all factual issues proceeding to trial before a jury.

Dated: October 18, 2016



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

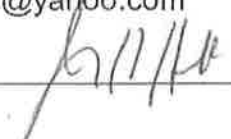
I hereby certify that on this 18th day of October, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
edgarrossjudge@hotmail.com

Gregory H. Hodges
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

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



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.,)
)
Additional Counterclaim Defendants)
)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

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.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: June 29, 2016

By:

Gregory H. Hodges
Gregory H. Hodges (V.I. Bar No. 174) *with permission*
1000 Frederiksberg Gade - P.O. Box 756 *(V.I. Bar 1081)*
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

EXHIBIT 2

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.,)
)
Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370
ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF
JURY TRIAL DEMANDED

NOTICE OF SERVICE OF PARTNERSHIP ACCOUNTING

Pursuant to this Court's "Final Wind Up Plan of the Plaza Extra Partnership" entered on January 9, 2015 (the "Plan"), defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner¹, respectfully provides this notice that a Partnership accounting has been provided to the Master and Hamed concurrently with the filing of this Notice.

In support of this Notice, Yusuf respectfully represents that § 5 of the Plan provides in pertinent part: "The Liquidating Partner shall provide a Partnership accounting." Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed on October 5, 2015, the Partners agreed that the Liquidating Partner would submit the Partnership accounting required by § 5 of the Plan to the Master and Hamed on November 16, 2015 and that the

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 758
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

¹ Capitalized terms not otherwise defined in this Notice shall have the meaning provided for in the Plan.



Partners will submit their proposed accounting and distribution plans required by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016.

The Partnership accounting provided to the Master and Hamed on this date was prepared by John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, which the Liquidating Partner believes is generally reliable and historically accurate.²

Respectfully submitted this 16th day of November, 2015.

DUDLEY, TOPPER and FEUERZEIG, LLP

By: 

Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf, Liquidating Partner

² The submission by the Liquidating Partner of the Partnership accounting prepared by Mr. Gaffney is without prejudice to his right as a Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

United Corporation West (Pship)
Summary of Remaining Partnership Items
For the Period From Jan 1, 2013 to Sep 30, 2015



<u>Location</u>	<u>A/C</u>	<u>A/C Description</u>	<u>Yusuf</u>	<u>Hamed</u>
East	10400	Cash - Banco CC 3307	(176,353.61)	-
East	14500	Due from/to Shopping Ctr	(119,529.01)	-
East	14500	Adjust Re Mtg on 10/01	119,529.01	-
East	20000	Accounts Payable (@ 8/31/15)	326,017.99	-
East	25800	Deposit Error Suspense	193,649.63	-
			<u>343,314.01</u>	<u>-</u>
STT	14000	Due from/to Yusuf	186,819.33	-
STT	25800	Deposit Error Suspense	-	181,355.40
STT	Adjust	Paid to KAC357 in July 2015	-	(181,355.40)
STT	Adjust	Trop Shpg Pd for KAC357	-	(10,242.00)
			<u>186,819.33</u>	<u>(10,242.00)</u>
West	14000	Due from/to Yusuf	120,167.33	-
West	14500	Due from/to Shopping Ctr	(900,000.00)	-
West	14600	Due from/to Hamed	-	(24,700.00)
West	20000	Accounts Payable	(5,632.57)	2,780.41
West	25800	Deposit Error Suspense	-	(39,788.40)
			<u>(785,465.24)</u>	<u>(61,707.99)</u>
		Due from (to) Partnership	<u>(255,331.90)</u>	<u>(71,949.99)</u>
		Partnership Distribution	255,331.90	255,331.90
		Repmt fr NonCash Distrib	<u>(255,331.90)</u>	<u>(71,949.99)</u>
		Net Cash Payout	-	<u>183,381.91</u>

UNITED CORPORATION PARTNERSHIP
CLAIMS RESERVE ACCOUNT
PO BOX 763
CHRISTIANSTED, VI 00821

251

101-667/216

16/01/15

Date

CHECK AMOUNT

Pay to the
Order of

Mohammed Hamed

\$ 183,381.91

One Hundred Eighty Three Thousand Three Hundred Eighty One and 9/100 Dollars

Security Features Details on Back



BANCO POPULAR

BANCO POPULAR DE PUERTO RICO
Orange Grove Branch
Saint John, U.S. Virgin Islands

For *Disbursement of settlement*

[Signature]
[Signature]

⑆021606674⑆ 190⑈199091⑈ 0251

EXHIBIT 3

DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am counsel for the Plaintiff and am personally familiar with the facts set forth herein.
2. According to the partnership accounting records, John Gaffney was paid \$220,000 by the partnership after the January 2015 Wind Up Order.
3. I received the Twelfth Bi-Monthly Report on January 31, 2017, with additional accounting information from John Gaffney. I promptly filed an objection and sent an email to John Gaffney asking him to provide the referenced accounting materials. See **Exhibit A**.
4. John Gaffney emailed me back, promising a response (as usual). See **Exhibit B**.
To date no documents have been supplied in response (as usual).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 24, 2017



JOEL H. HOLT



From: Joel Holt <holtvi@aol.com>
To: johngaffney <johngaffney@tampabay.rr.com>
Bcc: carl <carl@carlhartmann.com>; kim <kim@japinga.com>
Subject: Plaza
Date: Mon, Feb 13, 2017 10:48 am
Attachments: 20170213090624.pdf (315K)

John-please look at the attached filing and let me know if you can provide answers to some of the questions on the items listed-thx

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



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

Counterclaim Defendants.

MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

Consolidated With

CIVIL NO. SX-14-CY-287

**ACTION FOR DAMAGES
AND DECLARATORY
RELIEF**

CIVIL NO. SX-14-CY-278

**ACTION FOR DEBT
AND CONVERSION**

JURY TRIAL DEMANDED

**PLAINTIFF'S NOTICE OF OBJECTION TO LIQUIDATING PARTNER'S
TWELFTH BI-MONTHLY REPORT**

The *Liquidating Partner's Twelfth Bi-Monthly Report*, filed January 31, 2017, is once again filled with self-serving and inaccurate statements. As such, Hamed hereby submits a general objection to that report.

Much of the report restates assertions from reports 1-11 – Plaintiff incorporates his prior objections 1-11 herein.

Because requests for even the most basic information such as cancelled checks, vendor invoices and operating bank statements apparently cannot be provided/answered, Hamed also objects to the provided “financials” which are just Yusuf’s manipulated statements based on no disclosed backup documents.

Specifically, Hamed request details on the following listed financials:

A. Supporting documents for the following;

1/25/16 285 Other CRMVI LLC INV 4783 PD BY CRA F 5,088.97
1/25/16 286 Other CRMVI LLC INV 4984 PD BY CRA F 5,812.54
11/23/16 331 Withdrawal LEWIS CONSULTING LLC 3,800.00
12/6/16 333 Withdrawal LEWIS CONSULTING LLC 5,000.00
20000 Accounts Payable - Trade 3/11/16 41375V CDJ WE ARE WINE LLC -
Invoice: 0197 242.36
20000 Accounts Payable - Trade 3/11/16 41375V CDJ WE ARE WINE LLC -
Invoice: 0377 480.00
20000 Accounts Payable - Trade 3/11/16 41375V CDJ WE ARE WINE LLC -
Invoice: 0372 35.53
20000 Accounts Payable - Trade 3/11/16 41375V CDJ WE ARE WINE LLC -
Invoice: 0396 604.61
20000 Accounts Payable - Trade 3/11/16 41375V CDJ WE ARE WINE LLC -
Invoice: 0253 330.22
20000 Accounts Payable - Trade 3/11/16 41375V CDJ WE ARE WINE LLC -
Invoice: 0311 519.14
20000 Accounts Payable - Trade 3/11/16 41375V CDJ WE ARE WINE LLC -
Invoice: 0371 563.99
20000 Accounts Payable - Trade 3/11/16 CRA299 CDJ WE ARE WINE LLC -
Invoice: 0377 480.00
20000 Accounts Payable - Trade 3/11/16 CRA299 CDJ WE ARE WINE LLC -
Invoice: 0396 604.61
20000 Accounts Payable - Trade 3/11/16 CRA299 CDJ WE ARE WINE LLC -
Invoice: 0372 35.53
20000 Accounts Payable - Trade 3/11/16 CRA299 CDJ WE ARE WINE LLC -
Invoice: 0371 563.99
20000 Accounts Payable - Trade 3/11/16 CRA299 CDJ WE ARE WINE LLC -
Invoice: 0311 519.14

20000 Accounts Payable - Trade 3/11/16 CRA299 CDJ WE ARE WINE LLC - Invoice: 0197 242.36
20000 Accounts Payable - Trade 3/11/16 CRA299 CDJ WE ARE WINE LLC - Invoice: 0253 330.22

B. Also all information regarding these payments to United Corp, Dudley Topper

28600 Pship Claims Reserve Clearing 1/1/16 Beginning Balance
28600 Pship Claims Reserve Clearing 1/27/16 CRA292 CDJ UNITED CORPORATION 65,294.61
28600 Pship Claims Reserve Clearing 3/9/16 297 CDJ UNITED CORPORATION 66,559.67
28600 Pship Claims Reserve Clearing 4/1/16 302 CDJ UNITED CORPORATION 41,320.75
28600 Pship Claims Reserve Clearing 4/22/16 16-0422-01 PJ UNITED CORPORATION - LUTHERAN FA M SVCS PMT REC'D BY UN1IT,2E4D6.2E1AST FOR PE WEST
28600 Pship Claims Reserve Clearing 6/10/16 CRA312CM PJ UNITED CORPORATION - REIMB APR & M AY AP AGING TOT 65,653.79
28600 Pship Claims Reserve Clearing 8/9/16 CM16-0719-01 PJ UNITED CORPORATION - JONES SETTLE MENT VIA UNITED EAST5 COK,0 0404.5080 TO COLIANNI
28600 Pship Claims Reserve Clearing 8/12/16 321CM PJ UNITED CORPORATION - CRA REIMB PM T TO UNITED 71,280.75
28600 Pship Claims Reserve Clearing 8/30/16 16-0813-01CM PJ UNITED CORPORATION - PAID BY WEST CRA CK 322 40.00
28600 Pship Claims Reserve Clearing 10/7/16 CM16-0930 PJ UNITED CORPORATION - P'SHIP EAST S EP AP AGING PD BY WES6T0 ,C90R4A.49
28600 Pship Claims Reserve Clearing 11/23/16 CM16-1031 PJ UNITED CORPORATION - CRA CHK 332 T O PAY AP BALANCE AT 1207/,3112/41.612
28600 Pship Claims Reserve Clearing Change 449,424.39

C. Explanation of the following re General Liability Insurance (with refunds coming in, why a \$50,000 expense for instance)

63200 Insurance - Gen Liability 0.40 0.00 0.00 0.00 0.00 0.00 50,000.00 0.00 0.00 0.00 0.00 50,000.40
13100 Prepaid Insurance 1/28/16 JE28 GENJ INTER OCEAN 2015 REFUND 4,865.21
13100 Prepaid Insurance 1/28/16 JE28 GENJ INTER OCEAN 2015 REFUND 19,218.81
13100 Prepaid Insurance 1/28/16 JE28 GENJ INTER OCEAN 2015 REFUND 14,572.50
13100 Prepaid Insurance Change 38,656.92

D. More detail on the Legal Fees to Beckstedt & Associates

What cases are pending and what been settled, how much?

E. Explanation why contract labor was needed.

Contract Labor Expense 98,395.98 0.00 0.00 0.00 0.00 0.00 36,200.00 0.00 0.00
0.00 3,800.00 5,000.00 0.00 143,395.98

Finally, Hamed again disagrees with any payments to Yusuf or Gaffney which are not supported by time sheets or other proof of hours worked, and seeks recovery of those amounts.

Dated: February 13, 2017



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

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

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross

Special Master

edgarrossjudge@hotmail.com

Gregory H. Hodges

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00802

ghodges@dtflaw.com

Mark W. Eckard

Hamm Eckard, LLP

5030 Anchor Way

Christiansted, VI 00820

mark@markeckard.com

Jeffrey B. C. Moorhead

CRT Brow Building

1132 King Street, Suite 3

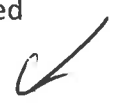
Christiansted, VI 00820

jeffreymlaw@yahoo.com



From: John Gaffney <johngaffney@tampabay.rr.com>
To: 'Joel Holt' <holtvi@aol.com>
Subject: RE: Plaza
Date: Tue, Feb 14, 2017 1:57 pm

Joel,

As you may have guessed from my mistaken message last night, your email below duplicated an email received from Greg Hodges. 

As you know, I'm leaving the island today and won't be back in the office until Wednesday February 22, 2017. I will be able to respond as needed when I return.

In the future, however, all questions and/or requests should be made directly to the liquidating partner.

Regards...John

From: Joel Holt [<mailto:holtvi@aol.com>]
Sent: Monday, February 13, 2017 10:48 AM
To: johngaffney@tampabay.rr.com
Subject: Plaza

John-please look at the attached filing and let me know if you can provide answers to some of the questions on the items listed-thx

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

