

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

FATHI YUSUF and
UNITED CORPORATION,

Plaintiffs,

v.

THE ESTATE OF MOHAMMAD A. HAMED,
THE MOHAMMAD A. HAMED LIVING TRUST,
and WALEED HAMED, AS EXECUTOR OF
THE ESTATE OF MOHAMMAD A. HAMED and
SUCCESSOR TRUSTEE OF THE
MOHAMMAD A. HAMED LIVING TRUST,

Defendants.

CIVIL NO. ST-17-CV- 384

**ACTION TO SET ASIDE
FRAUDULENT TRANSFERS**

COMPLAINT

Plaintiffs Fathi Yusuf ("Yusuf") and United Corporation ("United" and with Yusuf, collectively, "Plaintiffs"), through their undersigned counsel, for their Complaint against Defendants, The Estate of Mohammad A. Hamed (the "Estate"), The Mohammad A. Hamed Living Trust (the "Trust"), and Waleed Hamed, as Executor of the Estate and Successor Trustee of the Trust ("Waleed" and with the Estate and the Trust, collectively, "Defendants"), allege as follows:

NATURE OF ACTION

1. This is an action to set aside the transfer by Mohammad A. Hamed ("Hamed") of substantially all of his assets to the Trust, for which he was the original Trustee, less than one week

before he commenced litigation against Yusuf and United, which he knew or should have known could end with a determination that he owed millions of dollars to both of them.

2. Hamed made this transfer as part of a deliberate plan to render himself insolvent prior to launching his litigation campaign so that any debts determined to be due and owing to Plaintiffs would go unpaid.

THE PARTIES

3. Yusuf is a resident of the U.S. Virgin Islands.

4. United is a corporation organized and doing business under the laws of the U.S. Virgin Islands.

5. The Estate is a Virgin Islands juridical entity established under V.I. Code Ann. tit. 15, §§ 1-651 upon the death of Hamed on June 16, 2016. The Estate is currently being administered in a probate proceeding commenced on August 26, 2016 entitled: *In the Matter of Mohammad A. Hamed*, File No. SX-016-PB-76 (the "Probate Proceeding").

6. The Trust is a Virgin Islands juridical entity established under Virgin Islands law pursuant to an instrument acknowledged by Hamed on September 12, 2012. Hamed was the Grantor and original Trustee of the Trust.

7. Waleed is the eldest son of Hamed, a resident of the U.S. Virgin Islands, the Executor of the Estate, and the Successor Trustee of the Trust.

JURISDICTION

8. This Court has subject matter jurisdiction over this action pursuant to V.I. Code Ann. tit. 4, §76(a).

RELEVANT FACTS

A. Hamed Transferred Substantially All His Assets to the Trust in Anticipation of Litigation.

9. Hamed and Yusuf formed a partnership in 1986 that eventually owned and operated three grocery stores, two on St. Croix and one on St. Thomas (collectively, the "Plaza Extra Stores"), with each partner having a 50% ownership in all partnership assets and net profits, and a 50% obligation as to all losses and liabilities (the "Partnership").

10. The Partnership rented space for one of the Plaza Extra Stores on St. Croix—Plaza Extra East—from United.

11. In 2001, United, Yusuf, two of Yusuf's sons, and two of Hamed's sons were under federal investigation, which later led to an indictment and a District Court criminal proceeding entitled *United States of America v. United*, Criminal No. 2005-15 (the "Criminal Case").

12. In 2010, Yusuf discovered from seized documents returned by the FBI in the Criminal Case that Hamed and his sons had improperly taken millions of dollars in Partnership funds without disclosing or documenting their withdrawals.

13. Yusuf openly discussed his discovery of these improprieties with Hamed and his sons and sought repayment.

14. In 2012, Hamed and Yusuf attempted to agree on the dissolution of the Partnership in light of Yusuf's mistrust of Hamed and his family.

15. At about the same time, United demanded payment of rent from the Partnership that had accrued over many years, amounting to millions of dollars.

16. In the first half of 2012, Hamed and Yusuf exchanged proposed settlement proposals for the dissolution of the Partnership.

17. These efforts failed, as did their efforts to resolve the outstanding rent claims of United.

18. In anticipation of bringing suit against Yusuf and United for, among other things, declaratory and injunctive relief concerning the Partnership, Hamed created the Trust, excerpts of which are attached as **Exhibit A**, and transferred substantially all of his assets, with the exception of his interests in the Partnership, to the Trust.

19. On the same date, September 12, 2012, Hamed executed his Last Will And Testament (the "Will"), a copy of which is attached as **Exhibit B**.

20. Hamed's transfer to the Trust included his shares of stock in three corporations jointly owned by the Hamed and Yusuf families worth millions of dollars-- namely, Peter's Farm Investment Corporation, Plessen Enterprises, Inc. ("Plessen"), and Sixteen Plus Corporation. Under the Will, Hamed's entire Estate, including his interests in the Partnership and any real and/or personal property not previously conveyed to the Trust, was left to the Trust. Accordingly, the Trust and the Will taken together effectively transferred substantially all of Hamed's assets to the Trust (the "Transfers").

21. The Transfers, were a deliberate effort to render Hamed insolvent so that he and his Estate would be unable to pay any amounts determined due to Plaintiffs.

B. Hamed Files Suit to Declare His Interest in the Partnership.

22. On September 17, 2012, five days after executing the Trust and Will, Hamed filed suit against Yusuf and United seeking, among other relief, declaratory and injunctive relief concerning his rights under the Partnership—*Hamed v. Yusuf*, SX-12-370 (the "Main Case").

23. Plaintiffs filed an extensive counterclaim in the Main Case seeking, among other relief, dissolution of the Partnership, and recovery of millions of dollars improperly withdrawn by Hamed and his sons and millions of dollars owed in rent to United.

C. Hamed Divested Himself of Substantially All His Assets Despite Knowing He Would Owe Plaintiffs Far More than His Interests In the Partnership.

24. As Hamed alleged in his Complaint in the Main Case, the division of the net profits of the Partnership was meant to be 50/50. Over the years, the parties tabulated and tracked their withdrawals through various means including ledgers, receipts and checks and, according to Hamed's Complaint in the Main Case, had "scrupulously maintained records of withdrawals."

25. Since Yusuf informed Hamed of his discovery that Hamed and his sons had withdrawn far more funds than they disclosed in the form of ledger entries, receipts and checks, Hamed knew before he filed the Main Case that he would eventually have to account for those withdrawals when the Partnership was dissolved and an accounting of their Partnership interests was performed. Hamed divested himself of substantially all of his assets less than one week before filing a lawsuit that he knew or should have known could lead to the entry of a significant judgment against him.

26. Prior to the date of the Transfers, Plaintiffs had demanded that Hamed repay the debts owed to them. Furthermore, at the time of the Transfers, Hamed could reasonably foresee that Plaintiffs would counterclaim for a reconciliation of the Partnership withdrawals as well as to recover for Hamed's portion of the outstanding Partnership debts including, *inter alia*, the debt owed to United for unpaid rent.

27. In order to avoid liability for such an accounting and responsibility for Partnership debts beyond the value of his interests in the remaining Partnership assets, Hamed deliberately divested himself of his assets via the Transfers.

28. The purpose of the Transfers was to render Hamed insolvent to the extent that his interests in the remaining Partnership assets were insufficient to cover his portion of the Partnership liabilities, including rent owed to United, and to equalize the disparity between his withdrawals and those of Yusuf.

29. The Transfers were made with the actual intent to hinder, delay or defraud Yusuf and United in the collection of amounts due from Hamed.

30. Waleed commenced the Probate Proceeding by filing a Petition for Probate of Will and for Letter's Testamentary, which disclosed the existence of the Will and the Trust.

31. Plaintiffs first became aware of the Probate Proceeding in September 2016, as a result of their own efforts to search the public records for any filing relating to the death of Hamed. The first public notice of the Probate Proceeding was published on October 30, 2016.

32. On September 30, 2016, Yusuf submitted his Accounting Claims And Proposed Distribution Plan (the "Claim") in the Main Case, which asserted that Hamed owed millions of dollars to Plaintiffs over and above his remaining interests in the assets of the Partnership. The Claim was also submitted as a Creditor's Claim in the Probate Proceeding on April 12, 2017, which was rejected by Waleed, as Executor of the Estate, on May 25, 2017 without explanation.

33. Waleed, as Executor of the Estate, filed an Accounting and Inventory in the Probate Proceeding on January 10, 2017, copies of which are attached as Exhibits C and D respectively. These documents show that the Estate has no assets whatsoever.

COUNT I

To Set Aside Fraudulent Transfers

34. Plaintiffs reallege the allegations of paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. Hamed owned real and personal property assets worth millions of dollars as of September 12, 2012.

36. Hamed acquired these assets as a result of his interest in the Partnership over the life of Partnership.

37. Hamed and his sons misappropriated substantial assets from the Partnership over the life of the Partnership, for which Hamed must account to Yusuf in the Main Case. Hamed also owes United for 50% of all rent ultimately declared due and owing to United in the Main Case.

38. Pursuant to the Virgin Islands Uniform Fraudulent Transfer Act, V.I. Code Ann. tit. 28, §§ 171-182 (2011) (the "Act"), Plaintiffs are each a "creditor," as defined at § 171(4) of the Act, and Hamed is a "debtor," as defined at § 174(6) of the Act.

39. Pursuant to § 174(a)(1) of the Act, the Transfers were fraudulent because they were made with actual intent to hinder, delay or defraud creditors including Plaintiffs.

40. Pursuant to § 174(a)(2) of the Act, the Transfers were fraudulent because Hamed made them without receiving a reasonably equivalent value in exchange and (a) Hamed was engaged or about to engage in business or transactions for which his remaining assets were unreasonably small in relation to the business or transactions, and (b) Hamed intended to incur, or believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due.

41. Pursuant to § 175(a) of the Act, the Transfers were fraudulent because they were made without receiving reasonably equivalent value in exchange for the Transfers and Hamed became insolvent as a result of the Transfers.

42. Pursuant to § 174(b) of the Act, numerous “badges of fraud” indicative of Hamed’s actual intent to hinder, delay or defraud Plaintiffs were present with the Transfers including, *inter alia*, 1) the Transfers were to an insider, namely, Hamed, as the original Trustee of the Trust, and Waleed as the successor Trustee; 2) Hamed retained possession or control of the property subject to the Transfers; 3) the Transfers were concealed; 4) before the Transfers were made, Hamed had been threatened with suit by Plaintiffs; 5) the Transfers were of substantially all of Hamed’s assets; 6) Hamed removed or concealed assets; 7) Hamed received no consideration for the Transfers or the value of the consideration was not reasonably equivalent to the value of the assets transferred; 8) Hamed became insolvent shortly after the Transfers; and 9) the Transfers occurred shortly before or shortly after a substantial debt was incurred.

43. Plaintiffs did not know or have reason to know of the Transfers at the time they were made. The Transfers were concealed in that they were not disclosed in any public records and they were not discovered by Plaintiffs until they learned of the Probate Proceeding in September 2016. Waleed did not publish notice of the Probate Proceeding until October 30, 2016, more than four (4) years after the Transfers.

44. Hamed and his counsel not only concealed the Transfers from the Plaintiffs and the Court in the Main Case, they committed a fraud upon that Court by misrepresenting that Hamed still owned certain assets in August of 2014 when those assets had been included in the Transfers on September 12, 2012. This fraud was committed in Hamed’s effort to convince the Court not to grant Yusuf’s motion to reconsider its approval of a lease from Plessen to KAC357, Inc., a

company wholly owned by Hamed's sons, based in part on the value and *bona fides* of a guaranty from Hamed. In his Opposition to Yusuf's motion to reconsider filed in the Main Case on August 14, 2014 at pages 6-7, Hamed represented that "[h]e also has multiple other assets, including... stock in several other corporations jointly owned with the Yusuf's. See **Exhibit 1**. He also owns one half of Plessen and the property at issue." Exhibit 1 to that Opposition was Waleed's Declaration. At paragraph 13, Waleed declared, under penalty of perjury, that:

While Defendants argue that my father's guarantee is no good, . . . He also has multiple other assets, including stock in Plessen as well as several other corporations jointly owned with the Yusufs.

These representations to the Court were false because Hamed had secretly conveyed his stock in Plessen and the other two companies jointly owned with the Yusuf family to the Trust on September 12, 2012.

45. Accordingly, the Transfers are fraudulent under the Act and may be avoided by Plaintiffs, pursuant to § 177(a) of the Act. Alternatively, Plaintiffs are entitled to recover from Defendants an amount equal to the value of the assets at the time of the Transfers, pursuant to § 178(b) of the Act.

WHEREFORE, Plaintiffs pray for judgment and relief against Defendants as follows:

- a. Declaring that the Transfers are void as to Plaintiffs to the extent necessary to satisfy their claims against Hamed;
- b. Declaring that Plaintiffs may recover from Defendants an amount equal to the value of the assets at the time of the Transfers;
- c. Enjoining Defendants from any further disposition of the assets included in the Transfers and to recover any assets already transferred from the Estate or Trust;

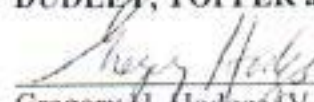
- d. Ordering Defendants to account to Plaintiffs regarding all assets included in the Transfers and any subsequent disposition;
- e. Appointing a receiver to take charge of all assets subject to the Transfers;
- f. Attaching or imposing a lien on all the assets subject to the Transfers;
- g. Declaring that Defendants hold all the assets subject to the Transfers in trust for Plaintiffs;
- h. Awarding Plaintiffs their costs including attorneys' fees in bringing this action; and,
- i. Providing such other and further relief as the Court deems proper.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: August 24, 2017

By:


Gregory H. Hodges (V.I. Bar No. 174)
Stefan B. Herpel (V.I. Bar No. 1019)
Charlotte K. Perrell (V.I. Bar No. 1281)
1000 Frederiksberg Gade- P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 774-4422
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com
sherpel@dtflaw.com
cperrell@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

THE MOHAMMAD A. HAMED LIVING TRUST

September 12, 2012



M-H

The Mohammad A. Hamed Living Trust

Article One Establishing the Trust

The date of this trust agreement is September 12, 2012. The parties to this agreement are Mohammad A. Hamed (the "Grantor") and Mohammad A. Hamed (the "Trustee").

I intend that this agreement create a valid trust under the laws of Virgin Islands and under the laws of any state in which any trust created under this agreement is administered. The terms of this trust agreement prevail over any provision of Virgin Islands law, except those provisions that are mandatory and may not be waived.

Section 1.01 Identifying the Trust

For convenience, the trust may be referred to as:

"The Mohammad A. Hamed Living Trust dated September, 2012."

To the extent practicable, for the purpose of transferring property to the trust or identifying the trust in any beneficiary or pay-on-death designation, the trust should be identified as:

"Mohammad A. Hamed Trustee of the Mohammad A. Hamed Living Trust dated September 12, 2012, and any amendments thereto."

For all purposes concerning the identity of the trust or any property titled in or payable to the trust, any description referring to the trust will be effective if it reasonably identifies the trust and indicates that the trust property is held in a fiduciary capacity.

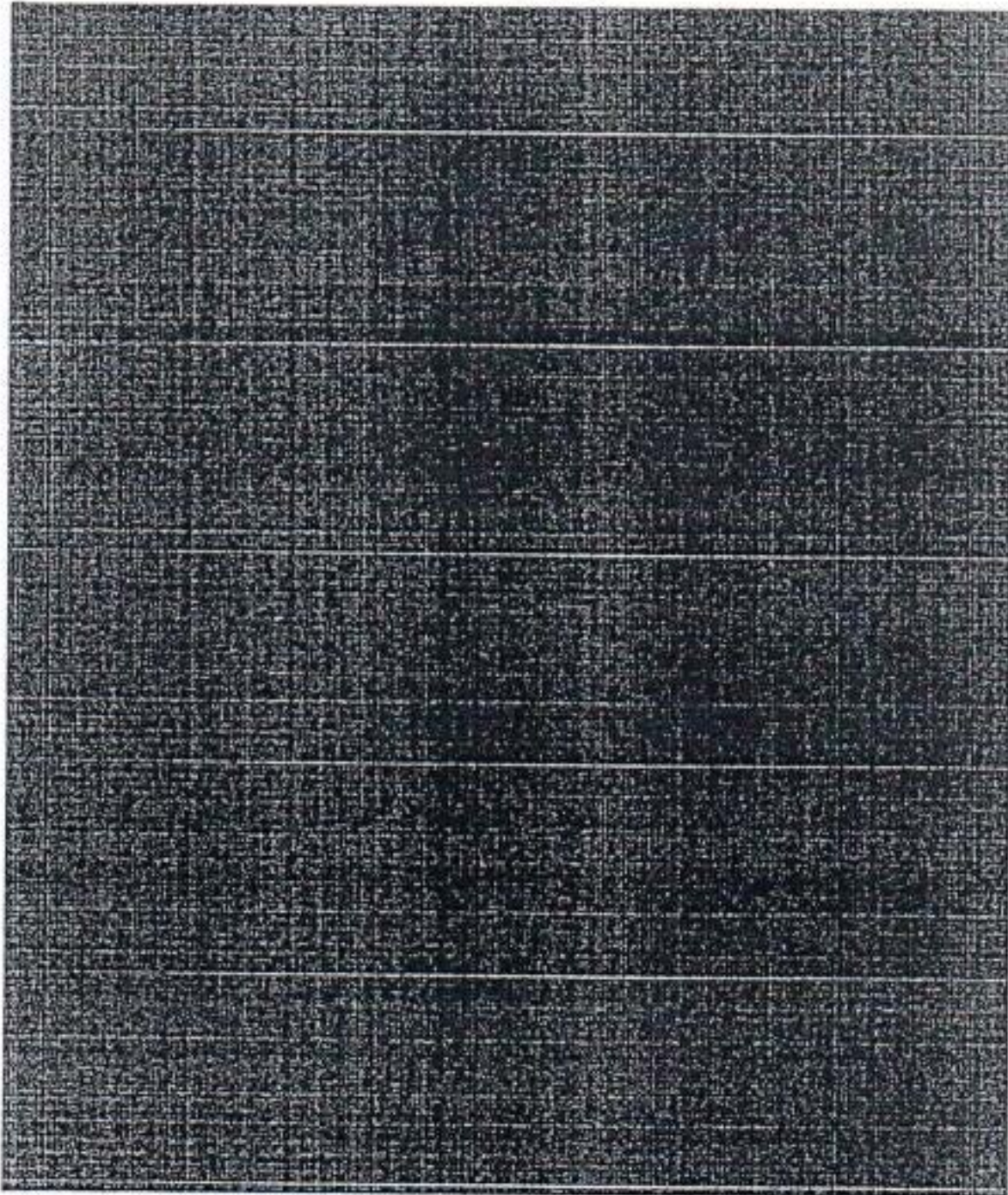
Section 1.02 Reliance by Third Parties

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of the Trustee or the powers held by the Trustee. To protect the confidentiality of this agreement, the Trustee may use an affidavit or a certification of trust that identifies the Trustee and sets forth the authority of the Trustee to transact business on behalf of the trust in lieu of providing a copy of this agreement. The affidavit or certification may include pertinent pages from this agreement, such as title or signature pages.

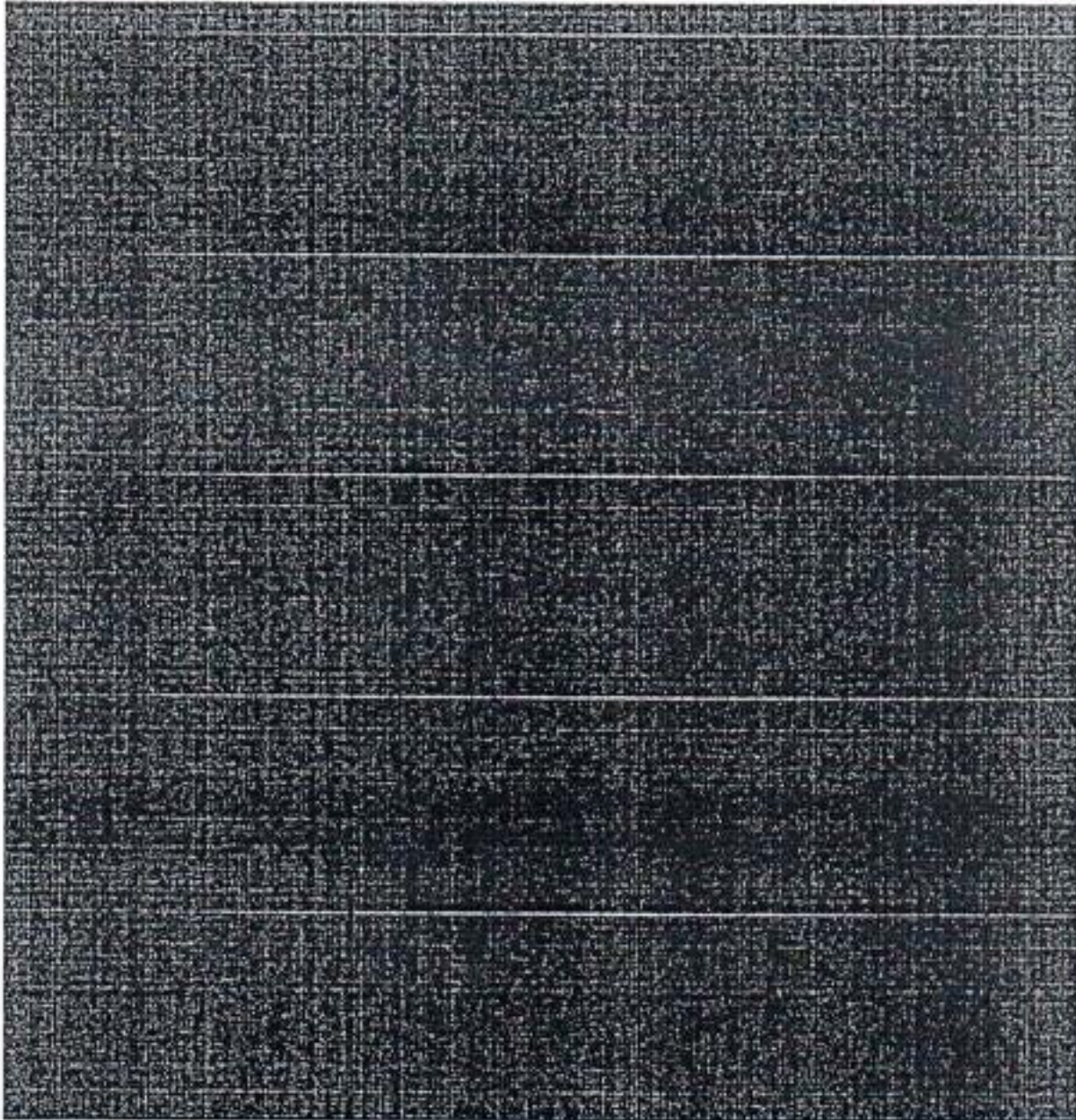
A third party may rely upon an affidavit or certification of trust that is signed by the Trustee with respect to the representations contained in the affidavit or certification of trust. A third party relying upon an affidavit or certification of trust shall be exonerated from any liability for actions the third party takes or fails to take in reliance upon the representations contained in the affidavit or certification of trust.

A third party dealing with the Trustee shall not be required to inquire into the terms of this agreement or the authority of the Trustee, or to see to the application of funds or other property received by the Trustee. The receipt from the Trustee for any money or

property paid, transferred or delivered to the Trustee will be a sufficient discharge to the person or persons paying, transferring or delivering the money or property from all liability in connection with its application. A written statement by the Trustee is conclusive evidence of the Trustee's authority. Third parties are not liable for any loss resulting from their reliance on a written statement by the Trustee asserting the Trustee's authority or seeking to effectuate a transfer of property to or from the trust.



Article Three
Trustee Succession and Trust Protector Provisions



Section 3.03 Trustee Succession After My Death

After my death, this Section will govern the removal and replacement of the Trustees.

(a) Successor Trustee

I name the following, in the order named, to serve as the successor Trustee after my death, replacing any then serving Trustee:

Mohammad A. Harneed Living Trust
3-1

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