

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

WALEED HAMED, as Executor of the)
Estate of **MOHAMMAD HAMED**,)
)
Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and **UNITED CORPORATION**,)
)
Defendants/Counterclaimants,)

v.)

WALEED HAMED, **WAHEED HAMED**,)
MUFEEED HAMED, **HISHAM HAMED**, and)
PLESSEN ENTERPRISES, INC.,)
)
Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
PARTNERSHIP DISSOLUTION,
WIND UP, AND ACCOUNTING**

Consolidated With

WALEED HAMED, as Executor of the)
Estate of **MOHAMMAD HAMED**,)
)
Plaintiff,)

v.)

UNITED CORPORATION,)
)
Defendant.)

CIVIL NO. SX-14-CV-287

**ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT**

WALEED HAMED, as Executor of the)
Estate of **MOHAMMAD HAMED**,)
)
Plaintiff,)

v.)

FATHI YUSUF,)
)
Defendant.)

CIVIL NO. SX-14-CV-278

**ACTION FOR DEBT AND
CONVERSION**

**REPLY TO OPPOSITION TO MOTION TO SET ASIDE LEASE TO KAC357, INC.
DUE TO FRAUD UPON THE COURT**

Defendant/counterclaimant Fathi Yusuf (“Yusuf”), through his undersigned counsel, respectfully submits this Reply to “Hamed’s Opposition to Motion For Fraud On the Court” filed

on August 29, 2017 (the “Opposition”). Yusuf’s Motion to Set Aside Lease to KAC357, Inc. Due to Fraud Upon the Court (“Motion to Set Aside Lease”) showed that Waleed Hamed (“Waleed”) and his counsel affirmatively misrepresented to this Court, among other things, that Hamed owned stock in Plessen Enterprises, Inc. (“Plessen”) as well as “several other corporations jointly owned with the Yusufs[,]” including Peter’s Farm Investment Corporation (“Peter’s Farm”) and Sixteen Plus Corporation (“Sixteen Plus”). *See* quoted language at ¶ 7 of the Motion to Set Aside Lease. Incredibly, the Opposition asks “what is untrue about this statement?” and then falsely declares that nothing is untrue. *See* Opposition at page 2. Of course, in order to believe the lie that Hamed owned stock in Plessen, Peter’s Farm, and Sixteen Plus in August of 2014 when the Opposition was filed, one must completely ignore Exhibits B, C, and D to the Motion to Set Aside, which are letters from counsel for Waleed, as Successor Trustee of the Mohammad A. Hamed Living Trust dated September 12, 2012 (the “Trust”), attaching notarized and witnessed stock transfers from Hamed to himself as Trustee of the Trust conveying all of his shares of stock in Plessen, Peter’s Farm, and Sixteen Plus. These transfers took place almost two years before the Opposition, in which Waleed and his counsel represent to this Court that Hamed still owned the stock of these corporations. Clearly, these misrepresentations influenced this Court since it found that “Hamed has a 50% interest in the substantial real property and cash assets of Plessen itself, including the property that is the subject of the Lease.” *See* excerpt of this Court’s Memorandum Opinion and Order dated December 5, 2014 denying Yusuf’s Motion for Reconsideration quoted at ¶ 10 of the Motion to Set Aside Lease. This finding is simply wrong because unbeknownst to the Court and to Yusuf at the time, Hamed had transferred all of his interests in Plessen to the Trust.

Waleed and counsel attempt to down play their dissembling by arguing that Hamed’s transfer of substantially all of his assets to the Trust almost two years before the time he was

attempting to convince this Court of the value of his personal guaranty was “no big deal” because the Trust was revocable pursuant to § 1.04 of the document creating the Trust, which the Court and Yusuf are shown for the first time in the Opposition.¹ While the Trust may have been revocable in August of 2014 when Hamed and his son were misrepresenting to this Court that Hamed personally owned stock in Plessen, Peter’s Farm and Sixteen Plus, the Trust certainly became irrevocable when Hamed died on June 16, 2016.

Hamed does not dispute that in light of the transfer of substantially all of his assets to the Trust pursuant to the trust instrument and his Will, his guaranty was worthless when it was offered in August of 2014 and it is now worthless because his probate proceeding has revealed that his estate has no assets whatsoever. *See* ¶ 15 of the Motion to Set Aside Lease. Hamed proclaims that “the Plessen stock was always and is now subject to attachment if the Landlord’s rights under the Guarantee were invoked. The same would be true of any other asset placed in the Trust.” *See* Opposition at p. 3. While Hamed professes that Plessen would have no problem collecting on his guaranty, he provides this Court with no clue whatsoever as to how Plessen would go about collecting on that guaranty since Hamed’s estate has no assets. This simply highlights the reason why Yusuf argued so strenuously that a guaranty from elderly, gravely ill person who lived in Jordan² was not intrinsically fair to Plessen.

Yusuf submits that if Hamed had been truthful with this Court in August of 2014, the Court never would have reached the conclusion: “The Court considers such a guarantee to be a necessary

¹ As can be seen from Exhibit E to the Motion to Set Aside Lease, counsel for Waleed, as successor trustee of the Trust, had only provided counsel for Yusuf with a heavily redacted version of the Trust document. That version did not include § 1.04 of the Trust.

² While Waleed represented that “My father lives here in Estate Carlton, St. Croix, not in Jordan, as Defendants claim” in his declaration dated August 12, 2014 attached as Exhibit 1 to the Opposition, it is undisputed that after Hamed retired in 1996 from his work at Plaza Extra Supermarkets, he returned to Jordan. It is also undisputed that Hamed died in Jordan. *See* Amended Petition For Probate Of Will And For Letters Testamentary at ¶ 2.

component of the determination that the Lease is intrinsically fair to Plessen.” See July 22, 2014 Memorandum Opinion and Order at p. 11. Instead of misrepresenting to the Court that he owned the stock of Plessen, Peter’s Farm, and Sixteen Plus, if Hamed had truthfully informed the Court that he conveyed all of that stock as well as substantially all of his other assets to the Trust and that his Will provided for the transfer of any remaining assets owned at his death to the Trust, there is little doubt that the Court would have rejected Hamed’s guaranty because it could have predicted, just as Yusuf did, that Hamed’s guaranty under those circumstances was simply worthless.

After effectively conceding that Hamed’s guaranty is worthless because his estate is worthless, and only after their dissembling has been clearly revealed do “the three shareholders of KAC” say they “will agree to **replace** Mohammad’s guarantee with their owned personal guarantees if the Court so directs.” See Opposition at page 4 (emphasis in original). This is too little and too late. As Yusuf pointed out in his August 29, 2014 Reply to Hamed’s Opposition to the Motion for Reconsideration, Hamed “never offered any explanation why the actual shareholders of the New Hamed Company (Waleed Hamed, Waheed Hamed and Mufeed Hamed) have not provided their personal guarantees as is customary in long term commercial lease transactions.” See footnote 8 in the quotation at ¶ 9 of the Motion to Set Aside. As the Court will recall, the original lease provided for no guarantees whatsoever from anyone. Only when Yusuf pointed out this glaring defect did Hamed offer a guaranty, which we now know is worthless. Only after their deceit has been revealed do these replacement guarantees get offered. Apparently, Waleed and his brothers think the terms of the Lease are nothing more than a game of “whack-a-mole.” Yusuf respectfully submits that Hamed’s clear dissembling should not be rewarded with a continuation of this disputed long term lease that was premised upon a lie. In no event, however, should the Court consider allowing Hamed’s sons to simply replace the defective guaranty that

Hamed purportedly signed (attached to the Opposition as Exhibit 2B) with the same document signed by his sons. This would amount to allowing the guarantors to negotiate with themselves regarding the terms of their guaranty. Accordingly, if the Court is inclined to consider a replacement guaranty at all, that guaranty should be the typically unlimited guaranty from the principals of a commercial tenant, not the poorly drafted, atypical guaranty Hamed negotiated with himself.

For all of the foregoing reasons, Yusuf respectfully requests this Court to enter an order setting aside the Lease and providing him such further relief as is just and proper under the circumstances.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: October 2, 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) 715-4405
Fax: (340) 715-4400
E-Mail: ghodges@dtflaw.com
sherpel@dtflaw.com
cperrell@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

It is hereby certified that on this 2nd day of October, 2017, I served a true and correct copy of the foregoing **Reply To Opposition To Motion To Set Aside Lease To KAC357, Inc. Due To Fraud Upon The Court**, which complies with the page and word limitations set forth in Rule 6-1(e), U.S. Mail, postage prepaid, addressed to:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
Quinn House - Suite 2
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: holtvi@aol.com

Carl J. Hartmann, III, Esq.
5000 Estate Coakley Bay – Unit L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: carl@carlhartmann.com

Mark W. Eckard, Esq.
ECKARD, P.C.
P.O. Box 24849
Christiansted, St. Croix
U.S. Virgin Islands 00824
E-Mail: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
JEFFREY B.C. MOORHEAD, P.C.
C.R.T. Brow Building – Suite 3
1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
E-Mail: edgarrossjudge@hotmail.com

Michele Barber

R:\DOCS\6254\1\DRFTPLDG\1711956.DOCX