

**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.*

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**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: SX-2012-cv-370

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

JURY TRIAL DEMANDED

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S RESPONSE TO YUSUF'S "BENCH MEMO"**

On December 13, 2017, two days before the hearing, Yusuf filed a "Bench Memo" raising new theories that the Court's orders did not apply to United Corporation, leaving it free to reinstate the pre-2006 claims. It also argues that Judge Brady's scathing denouncement of the BDO report with its "lifestyle analysis" was just "dicta". These points are incorrect and should be addressed at the outset of these proceedings.

As for the remainder of Yusuf's memo, Hamed has several comments.

**1. Yusuf agrees that the following items are ready for a 2-page briefing, as suggested by Hamed:**

- Additional rent for Bay 1 (\$200,000 & \$250,000)
- Reimbursement to Fathi Yusuf for Tutu rent & taxes
- John Gaffney salary & benefits
- Retirement bonus paid to Mary Gonzales
- 100 shopping carts
- Replacement of 2 condensers
- Payments to Dudley Law firm (for work re liquidating partner)

Thus, an order can be entered allowing this briefing to begin.

**2. At page 2, Yusuf opposes Hamed's proposed discovery process, but doesn't offer one of its own.**

What exactly is Yusuf proposing? A discovery process and schedule are needed.

**3. Yusuf claims that the \$2.7 million it owes should not be paid yet, but does not dispute that it is a valid claim.**

Regardless of when it is to be paid, it is an undisputed claim on which the Court has ruled and should be resolved now.

**4. On the \$504,591 in Yusuf DiRuzzo attorney's fees—Yusuf says he needs discovery on this item.**

Judge Brady has ruled on this. Yusuf should explain why discovery is needed.

**5. Yusuf also says the following require further discovery:**

- Past Partnership Withdrawals
- Dorothea property (if not time barred)
- David Jackson invoices
- Wally's payment of criminal fees (approx. \$300,000)
- Attorney and accounting fees paid by the partnership in the criminal case


This is fine with Hamed -- an order should be entered.

**6. As to the various legal arguments Yusuf makes in footnotes to his Exhibit A, which need to be briefed in some detail -- these are Hamed's initial responses:**

<p>p. 2, of Yusuf's memo, footnote 13 – Rent order did <b>not</b> deny an award of interest</p>	<p>Final relief on rent was given by the Court, and if it was not, Yusuf should seek reconsideration from Judge Brady.</p>
<p>p. 2, footnote 15 – Hamed falsely claims that United's claims for rent on bays 5 &amp; 8 are barred by the rent order</p>	<p>They are.</p>
<p>p. 4, footnote 25 – Judge Brady's opinion about the reliability of the BDO lifestyle analysis was <b>just dicta</b>—lifestyle analysis should still be considered</p>	<p>It is not dicta -- his order is clear and was <b>reaffirmed</b> in the second order denying reconsideration,</p>
<p>p. 4, footnote 27—\$3M in Fathi/Fawzia gifts to Shawn/Mafi, \$1.6M in past withdrawals prior to 2001 and \$4.1M in attorney's fees paid in criminal case requires discovery, contrary to Hamed's claim of no discovery</p>	<p>Discovery is fine, but not with regard to anything before 2006, which is time barred.</p>
<p>p. 5, footnote 28—Dorthea took place on 1/15/2000 &amp; 2001 &amp; is time barred. If not time barred, discovery is needed to determine what payments were received after the bar date</p>	<p>Nonsense. The funds were not received (and, therefore, not withheld) until after 2006. Discovery should be limited to first determining this fact before this becomes a fishing expedition.</p>
<p>p. 5, footnote 29--\$150,000 transfer for batch plant occurred on 11/11/07 and therefore is <b>not</b> barred by the statute of limitations</p>	<p>Nonsense. Yusuf's alleges (without proof) that this happened in 2007 (the document shows nothing.)</p>
<p>p. 5, footnote 30—Integra report is still viable b/c Judge Brady did not strike the report. Yusuf wants Integra to testify re "going concern" to Master</p>	<p>Yusuf should be required to explain why discovery is needed, as this is a resolved claim that the parties should not waste resources on.</p>
<p>p 7, footnote 36—Wally was responsible for payment of all attorney's fees in criminal case and Yusuf doesn't have docs, so the \$332,900 payment by Wally requires discovery.</p>	<p>Agree to discovery.</p>

p. 7, footnote 37—As Liquidating Partner, Fathi Yusuf chose not to pursue the \$989,627 in fees paid by the Partnership in the criminal case on behalf of the Partnership.	Fathi cannot waive partnership claims in an accounting -- that is absurd...why not waive all claims then?
p. 7, footnote 38—Plot 4H, Sion Farm (Hamed claim # 491) is barred by the Judge's order b/c the conveyance to United occurred on October 6, 1992	Judge Brady specifically held that this claim was not being resolved by the Wind-Up Order
p. 8, footnote 39—Parcel 2-4 Rem. Estate Charlotte Amalie (Hamed claim #490) is barred by the Judge's order b/c the conveyance of the property from Plessen to United occurred on 8/24/2006	The dispute over ownership arose in 2015 during the wind up period. The fact that United has title to it is of no consequence, as even the supermarket operated under that name prior to 2006.
p. 8, footnote 40—Hamed took Diamond Keturah off its list because it is time barred and Yusuf wants Master to rule that Diamond Keturah is time barred.	The Diamond Keturah property is owned by Sixteen Plus, so it need not be part of these proceedings. There is no dispute that the parties are 50/50 owners of that corporation. The dispute is with a third party who claims to have a mortgage on it.

**Dated:** December 14, 2017

  
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### CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of December, 2017, I served a copy of the foregoing by email, (via CaseAnywhere) as agreed by the parties, on:

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