

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

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD 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

Consolidated with

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

vs.

UNITED CORPORATION, *Defendant.*

Case No.: SX-2014-CV-287

Consolidated with

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

vs.

FATHI YUSUF, *Defendant.*

Case No.: SX-2014-CV-278

Consolidated with

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

Case No.: ST-17-CV-384

**HAMED'S MOTION FOR COURT ASSISTANCE AND DIRECTIONS RE
SPECIAL MASTER ROSS'S MAY 21st ORDER**

On May 21, 2018, Special Master Ross entered an Order *sua sponte*, directing the parties to seek further instructions from this Court as to certain aspects of the winding-up claims process of the Plaza Extra Supermarket Partnership. See **Exhibit 1**. Thus, this motion is directed to the attention of this Court to address issues raised in that Order.

I. The May 21st Order

The May 21st Order explained the dilemma perceived by the Special Master at the very outset of the Order, noting as follows (footnotes omitted):

THIS MATTER came before the Special Master (hereinafter "Master") *sua sponte*. It has come to the Master's attention that, while the Court has declared the existence of a partnership between Hamed and Yusuf and that "each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities," neither the Court nor Parties have detailed other specifics as to the Partnership, including but not limited to the duties, responsibilities, benefits and obligations of each partner.

In Hamed's motion as to Hamed's Claim H-13: 2013 refusal to pay 2002-2012 Taxes for Waleed and Waheed Hamed-despite having paid the identical taxes for Yusuf family members, Hamed proceeds as if each partner was equal in all aspects of the Partnership, including management and profit sharing. However, in Yusuf's opposition to Hamed's motion, Yusuf claimed that only profit sharing was equal but management was Yusuf's sole responsibility and that United and its shareholders enjoyed special pre-profit benefits not available to Hamed.

The thrust of this inquiry arises from the fact that each time Yusuf or United is found to have taken Partnership funds for their own uses, they argue that there was a "special arrangement" or an unwritten provision of the "Partnership Agreement" that allows this inequality.

In his Order, the Special Master used the example of Yusuf taking Partnership funds to pay the taxes of United's S-Corp shareholders, who were Yusuf and his family members; including (1) paying taxes owed by family members who did not work for any Plaza store and (2) paying taxes on unrelated, non-partnership income as well. At the time he made these payments, Yusuf was claiming United owned the three Plaza Supermarkets and that Hamed had no interest in these stores. See **Exhibit 2**.

Hamed objected to these payments. Indeed, at the hearing in the criminal case before Judge Lewis to accept the plea, it was made clear by the U.S. Attorney that these recent tax filings by United were disputed, but would be resolved in the civil case pending between the parties. See **Exhibit 2**.

After this Court found that the three Plaza Supermarkets were owned by the Partnership, and not United, Hamed filed a claim seeking the return of these Partnership funds used to pay the taxes owed by Yusuf family members on non-partnership income. On the other hand, if such payments were to be allowed, Hamed filed an alternate claim that the taxes paid by his family members should also be reimbursed by the Partnership.

After discussing his role as being limited to the distribution of partnership assets, as opposed to determining what rights a partner may have to such "special benefits," the Special Master then concluded his Order as follows:

ORDERED that **Parties shall seek declaration from the Court as to the full scope of the Partnership-including but not limited to each partner's duties and responsibilities, the benefits of and to each partner, and the benefits to United and its shareholders.** And it is further:

ORDERED that all claims that assert special benefits to United and its shareholders or Yusuf and all claims that assert a right to equal treatment for Hamed or his family members as Yusuf or his family members received shall be stayed until further notice. (Emphasis added).

Thus, pursuant to these instructions, Hamed brings these issues to the Court's attention.

II. The Plaza Extra Partnership

A. Absent a written agreement, what are the "terms" of the Partnership?

Both the original UPA and the present RUPA deal with two very different types of partnerships: (1) where the partnership is created by a writing, and (2) where the partnership is found to exist due to an oral agreement of the partners absent a writing. This action deals with the latter, a 1986 oral agreement to act as partners.

To determine the "terms" of such a partnership agreement under V.I. law, it is first necessary to apply the applicable statutory sections:

26 V.I.C. § 22 Formation of partnership

(a) Except as otherwise provided in subsection (b) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, **whether or not the persons intend to form a partnership.** (Emphasis added).

But, absent a written agreement, what are the "terms" of the partnership? Missing or unclear terms are supplied by the Act. See 26 V.I.C. § 44 (Effect of partnership agreement; nonwaivable provisions.)¹

(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. **To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners** and between the partners and the partnership. (Emphasis added).

See, e.g., *Bunnell v. Lewis*, No. 05-92-02558-CV, 1993 WL 290781, at *5 (Tex. App. July 27, 1993), *writ denied* (Mar. 9, 1994) ("A partnership is an association of two or more persons to carry on a business for profit as co-owners. . . .In the absence of agreement on other terms, the Texas Uniform Partnership Act supplies the missing terms. See *Park Cities Corp. v. Byrd*, 534 S.W.2d 668, 672 (Tex. 1976).")

Fortunately, once a partnership is determined to exist, one partner cannot make up, "explain" or dictate the rights, relative authority and power of the partners -- as these are set by statute in the Virgin Islands:

26 V.I.C. § 71 Partner's rights and duties

* * * *

(f) Each partner has equal rights in the management and conduct of the partnership business.

¹ The Revised Uniform Partnership Act ("RUPA") was enacted in the USVI as 26 V.I.C. §§ 1-274. However, it was enacted almost entirely based on the uniform act -- which includes significant commentary. For the full text see:

B. The 1986 “Partnership Agreement”

In short, no partner can unilaterally decide who gets what benefits. As this Court previously noted:

16. As the Court finds that there is a reasonable probability of Plaintiff's success in proving the existence of a partnership, he is entitled to the benefits of his status as a partner, including “an equal share of the partnership profits” and “**equal rights in the management and conduct of the partnership business.**” 26 V.I. Code § 71(b) and (f).

Hamed v. Yusuf, 2013 WL 1846506, at para. 14 (V.I. Super. April 25, 2013) (emphasis added). The “conduct of the Partnership” should, as the Act requires and this Court found, be equal. Similarly,

14. . . . By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

Thus, based on the law of the case, it is clear that Yusuf does not enjoy any special benefits that are not equally available to Hamed.² As such, it is respectfully submitted that this Court should direct the Special Master to proceed with all partnership claims as if each partner had equal rights to the same benefits and obligations in the partnership.

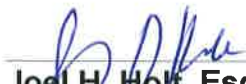
III. Conclusion

For the reasons set forth herein, it is respectfully requested that this Court clarify and resolve the issues raised by the Special Master in his May 21st Order. Based on the law of the case, it is clear that Yusuf does not enjoy any special benefits as a partner. As such, it is respectfully submitted that this Court should direct the Special Master very

² The V.I. Supreme Court addressed the “law of the case” doctrine in detail in *Virgin Islands Taxi Association v. Virgin Islands Port Authority*, 2017 WL 3176122, **9-11 (V.I. 2017), holding it is the “soundest view of law” for the Virgin Islands as it “precludes indefinite litigation, and promotes consistency, fairness, and judicial efficiency.”

simply on this inquiry, explicitly stating no partner is entitled to any special benefit over the other partner in the distribution of partnership assets.

Dated: May 29, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2018, I served a copy of the foregoing by email and (CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross (w/ 2 Mailed Copies)
Special Master
edgarrossjudge@hotmail.com

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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



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

MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

FATHI YUSUF AND UNITED
CORPORATION,

DEFENDANTS/COUNTERCLAIMANTS,

v.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,

COUNTERCLAIM DEFENDANTS.

WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

Blumberg No. 5208

EXHIBIT

1

THIS MATTER came before the Special Master (hereinafter “Master”) *sua sponte*. It has come to the Master’s attention that, while the Court has declared the existence of a partnership between Hamed and Yusuf¹ and that “each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities,”² neither the Court nor Parties have detailed other specifics as to the Partnership, including but not limited to the duties, responsibilities, benefits and obligations of each partner.

In Hamed’s motion as to Hamed’s Claim H-13: 2013 refusal to pay 2002-2012 Taxes for Waleed and Waheed Hamed—despite having paid the identical taxes for Yusuf family members, Hamed proceeds as if each partner was equal in all aspects of the Partnership, including management and profit sharing. However, in Yusuf’s opposition to Hamed’s motion, Yusuf claimed that only profit sharing was equal but management was Yusuf’s sole responsibility and that United and its shareholders enjoyed special pre-profit benefits not available to Hamed.³

¹ Yusuf has also conceded the existence of a partnership between him and Hamed. *See* Nov. 7, 2014 Order, p. 2 (“In his Motion re Master, Defendant Yusuf conceded the existence of a partnership by operation of law between himself and Plaintiff Hamed, and requested that this Court dissolve said partnership”); *Id.* (“In subsequent filings and in open court, Defendants have reiterated their concession as to the existence of the partnership.”)

² In the Court’s November 7, 2014 order, the Court found and declared that “a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities.” (Nov. 7, 2014 Order, p. 3)

³ In his opposition, Yusuf stated that:

Yusuf made it clear in his Motion to Amend that “[c]onsistent with longstanding practice going back decades, United, a subchapter S ‘flow through’ corporation, assigned all of the grocery store income for the 2002 to 2012 tax years to Mr. Yusuf and the other shareholders of United to be taxed at that level.” Yusuf’s April 20, 2018 Motion at p. 4. The shareholders of United are Yusuf and his wife, and their sons, Maher, Neje, Yusuf, Zayed, and Syaid. As Yusuf explained in his Motion, “United made annual and quarterly estimated income tax payments to the IRB for those tax years on behalf of Mr. Yusuf and the other Yusuf shareholders for the grocery store income that had been allocated to them.” *Id.* at 4. In June 2013, United agreed to pay \$6,586,132 for income taxes still owed for the 2002 to 2012 tax years for all of these Yusuf shareholders based primarily on shortfalls in estimated taxes paid for United income that was allocated to all of the Yusuf shareholders for each of those years. (Opp., p. 3)

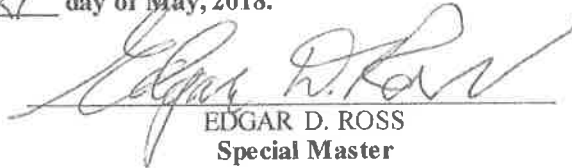
Waleed and Waheed were employees of United, while Yusuf’s sons were shareholders liable for their *pro rata* share of grocery store income taxes by virtue of United’s subchapter S status. And because United’s business income was exponentially greater than the income of Waleed and Waheed, the tax

At this juncture, the Master believes Parties shall seek declaration from the Court as to the full scope of the Partnership—including but not limited to each partner’s duties and responsibilities, the benefits of and to each partner, and the benefits to United and its shareholders. These issues fall outside the parameters of the Master’s current role—which is to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan). Thus, unless otherwise directed to do so by the Court, for it is the Court who sets the parameters for all of Master’s activities, the Master will defer to the Court in ruling as to the aforementioned issues. As such, the Master will stay the consideration of all claims that assert special benefits to United and its shareholders or Yusuf and all claims that assert a right to equal treatment for Hamed or his family members as Yusuf or his family members received. Accordingly, it is hereby:

ORDERED that Parties shall seek declaration from the Court as to the full scope of the Partnership—including but not limited to each partner’s duties and responsibilities, the benefits of and to each partner, and the benefits to United and its shareholders. **And** it is further:

ORDERED that all claims that assert special benefits to United and its shareholders or Yusuf and all claims that assert a right to equal treatment for Hamed or his family members as Yusuf or his family members received shall be stayed until further notice.

DONE and so ORDERED this 21st day of May, 2018.


EDGAR D. ROSS
Special Master

CC: HONORABLE DOUGLAS BRADY

liability for grocery store income allocated to the Yusuf sons and paid for by United was exponentially greater than Walced and Waheed’s \$133,128 tax liability. (Id., at p. 4)

DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, declare, pursuant to V.I. R. CIV. P. 84, as follows:

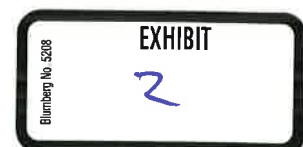
1. I am counsel of record for the Hamed Plaintiffs in the consolidated cases involving the Plaza Extra Supermarket litigation and am familiar with the facts set forth herein.
2. In 2013, United Corporation, Fathi Yusuf and his family members filed tax returns for the first time since the FBI raid in 2002.
3. Funds were taken from the Partnership account to pay these taxes even though (1) several of these individuals never worked for the Partnership and (2) at least a portion of the income was unrelated to the Partnership business, such as the rental income received from United's tenants at its shopping center.
4. At the time partnership funds were used to pay these taxes, Yusuf denied the existence of the partnership, asserting that the three Plaza stores belonged to United Corporation.
5. However, at the time these partnership funds were used to pay these taxes, Hamed had already filed suit to establish the existence of the partnership, disputing Yusuf's contention that United Corporation owned the Plaza stores, as well as his use of partnership funds to pay the taxes for non-partnership income.
6. At the criminal hearing accepting the guilty plea of United Corporation (before U.S. District Court Judge Lewis), the prosecuting U.S. Attorney, Lori A. Hendrickson, acknowledged these facts on the record, but noted that this dispute could be resolved in the civil case between the parties. See **Exhibit A** attached.
7. Yusuf subsequently admitted to the existence of the partnership, but he has still refused to return the funds used to pay these unrelated taxes to the partnership, or allow a similar payment to the Hamed family for their tax obligations.

I declare under penalty of perjury that the foregoing is true and correct, executed on this 29th day of May, 2018.

Dated: May 29, 2018



JOEL H. HOLT



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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

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DIVISION OF ST. CROIX

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UNITED STATES OF AMERICA, and

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GOVERNMENT OF THE VIRGIN ISLANDS,

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Plaintiffs,

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v.

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FATHI YUSUF MOHAMAD YUSUF,

9

aka Fahti Yusuf

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WALEED MOHAMMAD HAMED,

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aka Wally Hamed

12

WAHEED MOHOMMAD HAMED,

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aka Willie Hamed

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MAHER FATHI YUSUF,

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aka Mike Yusuf

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NEJEH FATHI YUSUF, ISAM YUSUF, and

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UNITED CORPORATION,

18

dba Plaza Extra,

19

Defendants.

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Criminal No. 2005-15

21

July 16, 2013

22

3:20 p.m.

23

TRANSCRIPT OF SENTENCING

24

BEFORE THE HONORABLE DISTRICT JUDGE

25

WILMA A. LEWIS



1 APPEARANCES:

2 LORI A. HENDRICKSON, ESQ.,
3 FOR THE GOVERNMENT

4 RANDALL P. ANDREOZZI, ESQ.,
5
6 FOR DEFENDANT WALEED HAMED

7 PAMELA COLON, ESQ.,
8
9 FOR DEFENDANT WAHEED HAMED

10 JOSEPH DIRUZZO, ESQ.,
11 FOR UNITED CORPORATION

12 NIZAR DEWOOD, ESQ.,

13 FOR FAHTI YUSUF

14 VALERIE LAWRENCE, RPR
15 OFFICIAL COURT REPORTER

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1 ~~for the agreement the same income, same type of~~
2 outside income of the other individuals, Waleed
3 and Waheed Hamed. And so to suggest that that
4 money only went to pay those incomes, I don't
5 believe is accurate.

6 Miss Hendrickson, if she can confirm that
7 with the tax returns with VIBIR. But my
8 understanding, that that went to pay the other
9 individuals' total liability, and should also
10 go to pay the total liability of the individual
11 defendants, Waleed and Waheed Hamed.

12 THE COURT: Meaning the additional
13 \$315,000?

14 MR. ANDREOZZI: Yes. Yes. If the others
15 got their taxes paid with these deposits,
16 payments, et cetera, then, so too should the
17 other individual defendants.

18 THE COURT: Attorney Hendrickson, do you
19 want to respond?

20 MS. HENDRICKSON: Yes, to clarify. I
21 agree with Mr. Andreozzi that during those
22 years the payments were made, based on copies
23 of the requests for payment government sought
24 and approved, and let the money be released,
25 that it was money to pay the tax obligations of

1 the Yusuf family members who were listed as
2 shareholders in the record of the VIBIR. And
3 there was other income on some of their
4 returns. So, if they had other investments and
5 things like that. So I think that is a fair
6 representation to say United paid for other
7 taxes that the individual shareholders owed on
8 top of the flow through based on United's
9 operations.

10 The government's point is, the whole
11 purpose of the plea agreement was to make sure
12 the VIBIR got a hundred percent of the money
13 paid or owed based on the operations of Plaza
14 Extra. That has occurred.

15 Now, to the extent whether they would have
16 been paid before, and not now, because of the
17 civil lawsuit, that's not a term of the plea
18 agreement. An understanding about who was
19 going to pay back then.

20 Now, I think in light of the civil
21 litigation, that Mr. DiRuzzo can address that,
22 but that's not a part of the plea agreement.
23 So to the extent there was additional money
24 paid, and I reviewed the tax returns, I agree
25 with Mr. Andreozzi's point, but I think it has

1 no impact on the plea agreement itself, since
2 the government's purpose was to get all the
3 income reported and the taxes paid for the
4 income of Plaza Extra. And with the payment of
5 \$6.5 million, that has occurred.

6 THE COURT: If that included other than
7 the flow through, so be it?

8 MS. HENDRICKSON: Yes.

9 THE COURT: And the question of whether or
10 not the Hameds are entitled to similar
11 treatment from United, that is, paying
12 additional taxes that don't represent the flow
13 through, is an issue for the Hameds and United
14 to resolve, but is not an issue that bears on
15 the plea agreement here before the Court?

16 MS. HENDRICKSON: Yes, Your Honor.

17 THE COURT: Attorney DiRuzzo.

18 MR. DiRUZZO: Thank you, Your Honor. Let
19 me start with the \$315,000. I think we all can
20 agree that every tax payer, like every
21 individual, has a personal responsibility to
22 pay their own taxes, responsible to the
23 government. They have to do what they're
24 obliged to do with the Internal Revenue Code.
25 I think we all can agree, when you're an

CERTIFICATE

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C-E-R-T-I-F-I-C-A-T-E

I, Valerie Lawrence, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter this 27th day of August, 2013.

Valerie Lawrence

**Valerie
Lawrence**

Digitally signed by Valerie Lawrence
DN: cn=Valerie Lawrence, o=St.
Croix Division, ou=U.S. District Court,
email=valerie_lawrence@vid.uscourts.gov, c=US
Date: 2013.08.28 11:21:02 -04'00'