

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 REPLY AS TO HAMED CLAIM H-13:
2013 REFUSAL TO PAY THE TAX SETTLEMENT FOR HAMED'S SONS--
DESPITE HAVING PAID THOSE TAXES FOR YUSUF'S SONS**

I. Introduction

Pursuant to a 2013 tax settlement between all of the criminal defendants and the Virgin Islands Bureau of Internal Revenue (“VI BIR”), funds were paid by the Partnership in 2013. Hamed asserts that, contrary to the original agreement and actions of the parties, Yusuf paid tax settlement for his sons but not Hamed's sons. Yusuf disagrees, arguing:

1. Because no 2002-2012 tax returns for Wally and Willie Hamed were provided, it is impossible to determine which claimed credits and charges occurred on or after September 17, 2006.
2. The Partnership's payment of the Yusuf children's taxes was a function of United Corporation (“United”) being a Subchapter S flow through corporation for the grocery store income and this was a longstanding practice that went back decades.
3. Hamed's sons were employees, while Yusuf sons were shareholders, so their tax liability was greater than the income of Wally and Willy Hamed. Further, Wally and Willie Hamed were not Partners and thus have no claim for the payment of back income owed for the preceding 10 years.
4. The Government did not settle all claims between the Partners and their children for \$6,586,132—that amount covered the Yusuf family only.
5. Hamed did not quantify the portion of the \$6.5 million payment that covered the liabilities arising from wage income or other non-wage income for the Yusuf family and provided no legal authority that Hamed's children are entitled to reimbursement of an equal portion of the tax liability.

II. Argument

A. Claim H-13 does not violate the pre-2007 claims bar

Yusuf argues that the Court needs Wally and Willie Hamed's 2002-2012 tax returns to determine which claimed credits and charges to the Partnership occurred on or after September 17, 2006, as Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006. This is not about payment of taxes for certain years, it is about the payment of a tax settlement with the VI BIR. It is uncontested that tax liability for both the Hameds and Yusufs was determined in 2013 by the VI IRB as part of a criminal settlement. The funds at issue were withdrawn from the Partnership in 2013 and the taxes were paid in 2013. Thus, the Partnership paid:

1. The partnership's taxes;
2. Yusuf's sons' taxes for their income from the partnership; and
3. Yusuf's family's taxes for other, additional income not related to the partnership.¹

Because the tax settlement of the criminal case, withdrawal from the Partnership and payment of the settlement amount all occurred in 2013, the limitation on bringing claims for transactions occurring on or after September 17, 2006 is irrelevant.²

B. Payment of Yusuf's sons' taxes because of United being an S-Corp was not a longstanding practice or part of the Partnership Agreement

Yusuf argues that because United operated as a Subchapter S flow-through corporation, his sons' tax liabilities should be paid for by the Partnership because the majority of their tax liability flowed from the grocery store income. To make this argument work, he states, at 3, that this was a “longstanding practice going back decades.”

This simply isn't true. Payment of his sons' taxes was not in the original 1986 Oral Partnership Agreement nor was it what the partners did historically. From 1986 to 1999, the Partnership did not pay the Yusuf's sons' taxes. And it did so for a very short period until the 2013 settlement -- just from 1999 until the stores were raided in 2001.

¹ The claims for #3, taxes for non-Partnership income, are set forth in H-144 and H-151.

² Likewise, because this claim arose in 2013, there is no need to produce the two Hamed tax returns as part of Claim H-13 to see what income was earned before that date that was unrelated to the partnership. However, if this Court determines that the Partnership can only pay income taxes for Partnership income, then those returns would become relevant to establish this amount. Of course, that would trigger similar scrutiny of the Yusuf tax returns for 2002 to 2012 to determine what amount would be due the partnership by Yusuf for using Partnership funds to pay non-Partnership income for himself and his family members, as asserted in Hamed Claims H-144 and H-151. As discussed below, at page 12, Yusuf has refused to provide these in discovery.

Yusuf actually began this “longstanding practice” unilaterally in 1999. He changed United to a Subchapter S Corporation³ and suddenly, unilaterally started paying just his sons' taxes not Hamed's sons' taxes. See attached testimony of Pablo O'Neill, Certified Public Accountant for United (June 5, 2003 testimony before a grand jury regarding the operations of the United Corporation.) **Exhibit 1**, HAMD224038-HAMD224132.pdf at p. HAMD224067.⁴

Finally, while it was done for those tax returns, there is no evidence the Hameds knew that the taxes of the Yusuf sons but not those of the Hamed sons was going to occur—only Yusuf filed and signed the Subchapter S documents and the subsequent tax returns. In short, in 1986 and in all years prior to 1999, the Yusufs all paid their own income taxes—that is how it started and always had been. Period.

³ Moreover, as discussed below, when discussing the change to a Sub-Chapter S, Fathi Yusuf represented that he was going to formally acknowledge that the Hameds had a 50% stake in the grocery operations and would be given shares of the S-Corporation. *Id.*

Q. Now, Mr. O'Neill, I want to show you what has been marked as Exhibit Number Eight. These are your handwritten notes; is that right?

A. That's correct.

Q. And those notes describe some discussions that you had with Mr. Yusuf relating to compensation for Wally Hamed; is that right?

A. Yes, I believe so.

Q. And at the time Mr. Yusuf discussed with you giving Wally Hamed or **the Hamed Family 50 percent of the corporation**; is that right?

A. That's correct. Or the operation of Plaza Extra.

Q. **Or the operation of Plaza Extra Supermarkets?**

A. **Correct.**

Q. And Mr. Yusuf would keep the ownership of the land for himself; is that right?

A. For his -- related under the United Corporation. That's correct.

* * *

Q. Did that ever happen as far as you know?

A. No. It didn't happen. (Emphasis added.)

⁴ Moreover, until the 2013 settlement, no tax returns were filed after the 2001 FBI raid on the stores. Thus, the first date that such returns were actually filed were in 2000 for 1999, and the last date until the settlement was for 2001. Hardly a longstanding practice, and certainly not part of the Partnership Agreement or course of dealings.

C. To the contrary, both the terms of the original Partnership Agreement and the original "course of dealings" had the Yusuf's and Hamed's paying their own personal income taxes

Prior to 1998, partnership law in the VI was controlled by the original *Uniform Partnership Act* ("UPA"). However, in 1997, the Partnership Committee of the *Uniform Law Commission* recommended, and the Commission then adopted, the *Revised Uniform Partnership Act* ("RUPA"). The VI Legislature enacted this with very few modifications in 1998, as 26 V.I.C. §§ 1-274.⁵ Sections 44 and 71 of the VI RUPA control here:

26 V.I.C. § 44 (Effect of partnership agreement; nonwaivable provisions.)

(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).

and:

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.** (Emphasis added.)^[6]

Moreover, the *Official Comments* to what is our Section 71, provide:

11. Subsection (j) continues with one important clarification the UPA Section 18(h) scheme of allocating management authority among the partners. In the absence of an agreement to the contrary, *matters arising in the ordinary course of the business may be decided by a majority of the*

⁵ The RUPA uniform text with the Official Notes is located at:

http://www.federal-litigation.com/_01%20Hamed%20Docket%20Entries/RUPA%20Text.pdf

⁶ These same provisions also existed in the UPA in 1986. Prior 26 V.I.C. § 71(5) provided:

Subchapter IV: Relation of Partners to One Another

71. Rules determining rights and duties of partners

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules--

* * * *

(5) all partners have equal rights in the management and conduct of the partnership business;

partners. **Amendments to the partnership agreement** and matters outside the ordinary course of the partnership business **require unanimous consent of the partners**. Although the text of the UPA is silent regarding extraordinary matters, courts have generally required the consent of all partners for those matters. [Citations omitted.] (Emphasis added.)

To put this another way, (1) a RUPA oral partnership's terms are the express terms agreed to *at the time of formation*, (2) any missing terms that are missing *at the time of formation* are immediately supplied by §§ 44 and 71 of the statute, (3) there was CLEARLY no original agreement to pay the Yusuf's son's taxes, and (4) to change that original RUPA oral partnership, there **must** be a *unanimous, sufficient, contractual* amendment.⁷

D. The Terms of the 1986 Oral Partnership Agreement and how it affects Yusuf's Tax Claim

The question before the Special Master is: What are the "terms" of the Partnership Agreement as to whether the Yusuf's sons' taxes should be paid, but not the Hamed sons?

1. Yusuf testified under oath as to the specific, 'original' terms of the 1986 Oral Partnership Agreement—There was no such term then

The following is Fathi Yusuf's April 2, 2014 testimony at his deposition *in this action*. He was testifying about his pre-rift examination in the *Idheileh* case regarding the history and terms of the 1986 oral agreement to form the Plaza Extra Supermarket Partnership (**Exhibit 2**, at pages 30-38):

[At page 24] (Deposition Exhibit No. 3 was marked for identification.)

Q. (Mr. Holt) All right. Showing you Exhibit No. 3, these are interrogatories filed in the same case in St. Thomas. If you look over on the last page, can you tell me, or second-to-last page, if that's your signature?

A. I see two signature. I see my son on top, and my signature below.

Q. Okay. And those are signed under oath, is that correct?

⁷ In one of Yusuf's appeals of the rulings in this case, the VI Supreme Court referred to this as a "contract of partnership." *Yusuf v. Hamed*, 59 V.I. 841, 852 (V.I. Sept. 30, 2013); *accord Galt Capital, LLP v. Seykota*, No. CIV. 2002-134, 2007 WL 4811409, at *1 (D.V.I. Dec. 10, 2007), *as amended* (Dec. 14, 2007) ("a verbal contract to establish a partnership.")

A. Yes.

* * * *

[At page 31] **I personally owned 50 percent of Plaza Extra in 1986.** ["Plaza Extra" is the supermarket operation as opposed to United Shopping Plaza which was the physical premises owned by United Corporation. Fathi Yusuf's brother and nephews initially owned the other half of the supermarket business.] I own United Shopping Plaza. I'm a member of United Corporation, who owns United Shopping Plaza.

* * * *

[At pages 32-38] Q. Then on the next page, Page 14 of this [Ideilah] deposition, But before I continue, I'm going to—I would like to go back a little bit more to clear something. When I was in financial difficulty, when I was in financial difficulty, my brother-in-law, he knew—And your brother-in-law would be Mohammad Hamed, correct?

A. That's correct.

Q.—I shouldn't—he start and to bring me money, okay? He own a grocery store, Mohammad Hamed, while I was [page 33] building, and he have some cash. He knew I'm tight. He start to bring me money, bring me, I think, 5,000, 10,000. I took it. After that, I say, Look, we family. We want to stay family. I can't take no money from you because I don't see how I can pay you back. So he insisted, Take the money. If you can afford to, maybe pay me. If you can't, forget about it, okay? He kept giving me. I tell you, under this condition, I will take it. I will take it. That's correct?

A. That's absolutely correct.

Q. He kept giving me until 200,000. Every dollar he make profit, he give it to me. He win the lottery twice, he give it to me.

A. May I say something there?

Q. Yeah.

A. Maybe I made a mistake. It was 225.

Q. Okay.

A. Even though, you'll see it someplace else, it's 225 he gave me.

Q. Every dollar --

A. Under no one condition whatsoever, just as a family. Not under any kind of condition whatsoever. And I don't take no money from nobody, unless I know how I can pay it back, because I am in the business not to lose relatives and friend. My enemy do not lend me money. [Page 34]

Q. All right.

A. My—only my family and my dearest friend, it's the one who care about me, is the one who lend me money. That's the reason I took it, under one condition. If I don't have it, Mr. Mohammad, I don't want to buy—bust my head in the wall, try to raise your money. Even though with no signature. Signature in my—in my philosophy doesn't mean anything. It mean the will of a person. And based on that, I took the man money. Please go ahead.

Q. Okay. So let me—I'm going to read and just ask you if this is true: Every—every dollar he—he made profit, he give it to me. He win the lottery twice, he give it to me. All right? At that time, the man have a little grocery, they call it Estate Carlton Grocery. Very small. Less than 1,000 square foot, but he was a very hard worker with his children. And it was, you know, just

like a convenience mom-and-pop store. He was covering expenses and saving money. Is that correct?

A. Absolutely correct.

Q. I say, Brother-in-law, you want to be a partner too? He said, Why not? Is that true?

A. That's true.

* * * *

[At page 37] Q. We wait until my [previous] partner, which is my brother, came. He is an older man, and we came up to Mr. Mohammad, [to let them know he was pulling his money out of the supermarket effort] I say, Do you want to follow them? He say, Yeah, I will follow them, but do you want—do you have any money to give? **I say, Look, Mr. Hamed.** You know I don't have no money. It's in the building. And I put down payment in the—in the refrigeration. **So if you want to follow them, if you don't feel I'm going to the best I can, if you want to follow them, you're free to follow them.** I'll pay you the same penalty, 75,000. I will give you 12 percent on your 400,000. Is that what you offered?

A. That's absolutely correct.

Q. **He says,** Hey, if you don't have no money, it's no use for me to split. **I'm going to stay with you. All right. Okay. I say, Okay. You want to stay with me, fine. I am with you,** I'm willing to mortgage whatever the corporation own. The corporation owned by me and my wife at that time. Is that correct?

A. Yes.

Q. And my partner only put up 400,000, that's all he put in, and he will own the supermarket. I have no problem. I told my partner, Look. I take you **under one condition.** We will work on this, and I'm obligated to be your partner [page 38] so long as you want me to be your partner, until we lose 800,000. If I lose 400,000 to match your 400,000, I have all the right to tell you, Hey, we split, and I owe you nothing. Is that correct?

A. Yes. . . .(Emphasis added.)

2. That Yusuf testimony demonstrates offer, acceptance and *specific terms*

Based on the above, there was a definite and specific oral offer of partnership. When everyone else was pulling out and abandoning Yusuf after he was denied financing, Hamed said "I'm going to stay with you." When he did so, Hamed expressly agreed that to 'buy in' he would put up \$400,000 in unmatched⁸ cash—back when that was a LOT of money. He agreed that he would "work on this" business with Yusuf, giving up his store.

⁸ Although Hamed thought that he was getting an interest in the physical store, it has turned out that was not the case. Thus, Hamed put up cash, Yusuf put up debt that the Partnership paid off with 50% of Hamed's money, and then he charged the Partnership rent. Thus, it was *Hamed's cash in the "grocery store" part of this, not Yusuf's.*

And there was also specific acceptance: "[a]nd **my partner** only put up \$400,000, that's all he put in, and **he will own the supermarket....We will work on this, and I'm obligated to be your partner so long as you want me to be your partner.** I have no problem. I told **my partner**, Look. **I take you** under one condition." (Emphasis added.)

Thus, the terms were clear. The oral partnership was formed. They were '50/50' partners. Hamed had to make a \$400,000 capital contribution. Hamed committed that he would "work on this" full time with Yusuf. The Partnership would continue 'unless we lose 800,000'. There were no other terms stated and **there was certainly no 1986 term that "Fathi could begin to pay his kids' totally unrelated taxes beginning in 1999."**

3. Yusuf argues that the terms allow differential payment of taxes

As discussed above, Hamed and Yusuf had multiple discussions in 1986 regarding what type of business they would operate (grocery store), the form of that business (partnership) and the equal conduct and ownership. They discussed additional, explicit terms regarding amount of (unmatched) capital that would be contributed by Hamed and that the Partnership would terminate on the happening of a specific 'loss' event. Thus, an oral contract was formed *with exactly those terms*. In retrospect, as oral agreements of this sort among friends go, it was pretty clear.

Thus, based on both this and Yusuf's current concession, there was nothing in the original oral contract that stated that the Partnership could pay all of his kids' personal income taxes' but not those of Hamed's sons. Whether he says so explicitly or not, Yusuf is actually arguing that there must have been a post-formation amendment where Hamed agreed to this new term: to allow his sons' income tax to be paid starting in 1999.

4. The Proposed Amendment

There was no amendment. One cannot acquiesce to the alteration of a contract once formed. RUPA controls this agreement, and the *Official Comment* to Section 71, provides:

11. Subsection (j) continues with one important clarification the UPA Section 18(h) scheme of allocating management authority among the partners. In the absence of an agreement to the contrary, *matters arising in the ordinary course of the business may be decided by a majority of the partners*. **Amendments to the partnership agreement** and matters outside the ordinary course of the partnership business **require unanimous consent of the partners**. Although the text of the UPA is silent regarding extraordinary matters, courts have generally required the consent of all partners for those matters. [Citations omitted.] (Emphasis added.)

Yusuf did not obtain the consent of Hamed to begin to pay his sons' taxes in 1999—to the contrary, as the CPA testified, the change that was discussed would have had the Hameds as shareholders. When Yusuf went forward with such a change and left the Hameds out, this was certainly not Hamed's consent to an amendment. There is not one document demonstrating a discussion as to Yusuf's sons getting an advantage in 1999. To the contrary, as the CPA stated, the Hameds believed that there was Subchapter S stock for the grocery operations that would be issued to them. Nothing of record supports any contention that Hamed agreed to any such amendment.

Finally, and critical to the decision here, Hamed can find no RUPA decision in any jurisdiction in which one partner was allowed to unilaterally amend an oral RUPA partnership absent any writing more than 13 years after the Partnership was formed.

Thus, **the dispositive fact here is that Yusuf has not provided a single email, letter, or other support (much less any actual written amendment) for the idea that Hamed agreed that suddenly, starting in 1999 Yusuf's kids' taxes would be paid but not Hamed's**. That would not only be crashingly stupid for Hamed to do, it has **absolutely no support of record**. And even if Yusuf argues that he "obtained consent"

for the amendment by promising the Hamed's shares, it would have been obtained by deception and invalid.⁹

So, in the absence of a written amendment, what Yusuf must really saying is that he had the right to amend the partnership unilaterally. That violates RUPA. Moreover, if he was thinking about amending the Partnership Agreement to pay just his own sons' taxes, Wally Hamed would surely have known about it. Yusuf has stated that at that time, Wally Hamed was his "right hand man."

49. ADMIT or DENY that at the time the criminal tax evasion prosecuted in United States of America v United Corp., et. al., VI D. Ct. 2005-cr-015, to which United pled guilty, was undertaken [1996-2001], Fathi Yusuf was in charge of the finances for the Plaza Extra Partnership and created the criminal plan to skim grocery store funds which led to the criminal conviction.

RESPONSE: Defendants object to this request as vague and ambiguous as to the meaning, nature and scope of the phrase "in charge of the finances for the Plaza Extra Partnership," which was not a party to the Criminal Action and was not declared to exist until November 7, 2014 in this civil action. It is denied that Fathi Yusuf solely created the plan to underreport the gross receipts of the grocery stores. **That plan was primarily conceived and executed by Mr. Yusuf and Waleed Hamed, Mr. Yusuf's then "right hand man."**

⁹ RUPA, 26 V.I.C. § 3(f) provides:

A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

See also *Dzen v. Dzen*, No. CV 960061312S, 1999 WL 130545, at *7 (Conn. Super. Ct. Feb. 26, 1999)("it must necessarily be an informed consent, with knowledge of the facts necessary to give an intelligent consent through full disclosure consistent with the other partner's fiduciary duties. 59A Am.Jur., supra, § 445. Our Supreme Court has stated that "[t]his statutory language was intended to incorporate the fiduciary relationship as described by Chief Judge Benjamin Cardozo in *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545 (1928) [in which he stated that a fiduciary] is held to something stricter than the morals of the marketplace." (Emphasis added.)

See generally *Jesus-Santos v. Morgan Stanley Dean Witter, Inc.*, No. CIV. 05-1336(DRD), 2006 WL 752997, at *1 (D.P.R. Mar. 22, 2006)("plaintiffs' consent was obtained by fraud or by error, or deceit.")

5. In any case, Yusuf waived any such claims by refusal in discovery

Yusuf has refused to turn over his taxes or those taxes of his sons for the 2002-2012 time period, stating that "the proposed discovery is not relevant to any party's claim or defense":

RFPDs 30 of 50: Please produce copies of all original tax returns filed by United, Fathi, Mike, NejeH and Yusuf Yusuf from 1986 to date.

Response: * * * Defendants further object to this Request for Production because it seeks personal financial information concerning Yusuf's sons, who are not parties to this case. Defendants further object to this Request for Production because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds.

Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

See Yusuf's Response to Hamed's 5th Request for Production of Docs. Nos. 28-36.

III. Conclusion

For the reasons set forth herein, it is respectfully requested that the Special Master order the Partnership to pay Wally and Willie Hamed's 2013 VI BIR tax settlement, just as it did for Yusuf's sons in 2013.

Dated: June 27, 2018


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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

IN RE)
)
GRAND JURY PROCEEDINGS) USAO NO. 2001 R00389
)
)
_____)

TESTIMONY OF:

PABLO O'NEILL, CPA

DATE:

Thursday, June 5, 2003

Ex. 1

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S2-019153

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1 returns.

2 Q. And you discussed this with your partner
3 Mr. De Luca; is that right?

4 A. At that time Mr. De Luca, right.

5 Q. And what did you say to Mr. De Luca?

6 A. Well, basically, that they were reviewing
7 their sales, and they will take care -- if there's any
8 discrepancy they will provide us the additional
9 information.

10 So it's nothing but at the time, you know, it was
11 developing.

12 Q. But at the time -- and since then your role
13 hasn't been to audit that information; is that right?

14 A. That's correct.

15 Q. So you relied on United and Mr. Irvin and
16 Mr. Yusuf and Wally Hamed and others to provide you with
17 accurate information?

18 A. That's correct.

19 Q. Mr. O'Neill, for the years 1994 to 1998
20 United filed its returns as a regular corporation; is that
21 right?

22 A. That's correct.

23 Q. And as we discussed before, it was United who
24 would actually pay taxes on its income; is that right?

25 A. That's right.



1 Q. Now for 1999 that changed?

2 A. Right.

3 Q. And United became what you called before a
4 Subchapter S Corporation?

5 A. That's correct.

6 Q. A small business corporation?

7 A. Small business. That's correct.

8 Q. And by making the selection, then, United,
9 the corporation, wouldn't pay any income taxes; is that
10 right?

11 A. That's right.

12 Q. Instead, the income taxes would be paid by
13 the different owners of United?

14 A. That's correct.

15 Q. And sometime in 1998 you discussed making
16 this change with Mr. Yusuf?

17 A. That's correct. An election had to be made
18 of filing then, which was done.

19 Q. So in order to elect the status of being a
20 small business corporation you had to file a form with the
21 Virgin Islands?

22 A. That's correct.

23 Q. And did Mr. Yusuf ask you in 1998 for ways
24 that he could reduce the amount of corporate taxes that
25 were being paid?

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1 ~~A. How to avoid paying so much high taxes, yes,~~
2 it was discussed.

3 Q. And then did you recommend forming the S
4 corporation?

5 A. Yes, I did. By allocating the accountings
6 based on different family members which were owners we
7 reduced, avoided double taxation in the course of reducing
8 the tax.

9 Q. And, also, at that time, up until that time
10 in 1998 the corporation was owned by Mr. Yusuf and his
11 wife as far as you knew?

12 A. That's correct.

13 Q. And when the corporation elected to be a
14 small business corporation you recommended to Mr. Yusuf
15 that he should give portions of the corporation to his
16 children; is that right?

17 A. That's correct.

18 Q. In that way, since the individuals paid the
19 tax and his children had a lower tax rate than he had,
20 they'd actually pay less taxes on the income from United;
21 is that right?

22 ~~A. That's correct.~~

23 Q. Now, Mr. O'Neill, I want to show you what has
24 been marked as Exhibit Number Eight.

25 These are your handwritten notes; is that

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1 right?

2 A. That's correct.

3 Q. And those notes describe some discussions
4 that you had with Mr. Yusuf relating to compensation for
5 Wally Hamed; is that right?

6 A. Yes, I believe so.

7 Q. And at the time Mr. Yusuf discussed with you
8 giving Wally Hamed or the Hamed Family 50 percent of the
9 corporation; is that right?

10 A. That's correct. Or the operation of Plaza
11 Extra.

12 Q. Or the operation of Plaza Extra Supermarkets?

13 A. Correct.

14 Q. And Mr. Yusuf would keep the ownership of the
15 land for himself; is that right?

16 A. For his -- related under the United
17 Corporation. That's correct.

18 Q. Was Mr. Wally Hamed to be given the entire
19 St. Croix store or just half of that?

20 A. It would have been for him and his family.
21 The Hameds.

22 Q. The Hameds, yes?

23 A. Right.

24 Q. And was the Hamed Family to be given --
25 was --



1 A. Half of the stores of the entity.

2 Q. So half of the St. Croix stores and half of
3 the St. Thomas stores?

4 A. Right.

5 Q. So the Yusuf Family and the Hamed Family
6 would own -- each would own half of the stores; is that
7 right?

8 A. That's correct.

9 Q. Did that ever happen as far as you know?

10 A. No. It didn't happen.

11 Q. Mr. O'Neill, you mentioned that you also have
12 been preparing individual income tax returns for Mr. Yusuf
13 and his wife; is that true?

14 A. That's true.

15 Q. Okay, Mr. O'Neill, I want to show you
16 Exhibits Nine through Sixteen, and those are the 1994
17 through 2001 income tax returns for Mr. Yusuf and his
18 wife; is that right?

19 A. Correct.

20 Q. And those returns were prepared by your firm;
21 is that right?

22 A. That's correct.

23 Q. Mr. O'Neill, I want to take you through the
24 signatures of these returns.

25 A. Yes.

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losses.

So if I see the form I can tell you how it works out.

GRAND JUROR: Thank you,
Senator.

MR. PAUZE: Mr. Foreman, may
he be excused?

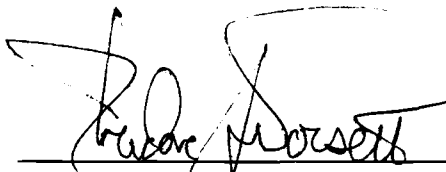
GRAND JURY FOREPERSON: Yes, he may.
Thank you. And you may be excused.

THE WITNESS: Thank you.

- - -

This document is hereby certified to be a true
and correct transcript of the foregoing proceedings.

DATED: July 10, 2003


Theodore A. Dorsett, RPR, CM



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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.) Case No. SX-12-CV-370
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED, MUFEED)
HAMED, HISHAM HAMED, and PLESSEN)
ENTERPRISES, INC.,)
)
Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

Ex. 2

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By: K. Glenda Cameron

Also Present:

Josiah Wynans, Videographer
Kim Japinga
Waleed Hamed
Hisham Hamed
Mufeed Hamed
Maher Yusuf

FATHI YUSUF -- DIRECT

1 Q. So the supermarkets operated under their own bank
2 accounts, and the shopping center had its bank account, is
3 that correct?

4 A. Yes.

5 (Deposition Exhibit No. 4 was
6 marked for identification.)

7 Q. (Mr. Holt) Okay. All right. Showing you
8 Exhibit No. 4.

9 In the same case that we've been dealing
10 with, you gave a deposition.

11 Do you recall that?

12 A. Excuse me?

13 Q. In that case in St. Thomas, you gave a deposition.

14 Do you recall that?

15 A. Yeah.

16 Q. Okay. And I have the entire deposition here, if
17 you'd --

18 A. And I saw it, too.

19 Q. Okay. I just want to ask you some specific
20 questions from this deposition.

21 A. Okay.

22 Q. On -- on Page 8, if you just want to turn to the
23 next page?

24 A. Page -- what page, sir?

25 Q. Just turn right over to the next page. You see at

FATHI YUSUF -- DIRECT

1 the top, it says, I personally owned 50 percent of Plaza
2 Extra in 1986. I own United Shopping Plaza. I'm a member
3 of United Corporation, who owns United Shopping Plaza. I
4 built that store, I was struggling for a loan. The whole
5 island knew what I went through. I said, I'm going to build
6 this building no matter what, and hold the supermarket for
7 my personal use.

8 Is that correct?

9 **A.** That's correct.

10 **Q.** It took me three years. I give an offer to two
11 nephews of mine and my brother-in-law, Mr. Hamed, if they
12 would like to join me in the building up of the store
13 together, and we should not have any problems. If I finish
14 build up the building, we should have no problem whatsoever
15 to go to the bank, and the bank will grant us the loan to
16 operate the supermarket.

17 Is that true?

18 **A.** That's correct.

19 **Q.** All right. Over on the next page, it says, So I
20 left Nova Scotia struggling, left them not to get a loan,
21 but did not close my account. I struggled all over looking
22 to get a loan. I went to all local banks at that time, and
23 everybody says, I'm sorry, we can't help you. So I find it
24 is a golden opportunity for me to go to Banco Popular.

25 So I went to the manager there, I explained

FATHI YUSUF -- DIRECT

1 to him my history, what Scotia did to me, so he say, I will
2 come to the site. When he came to the site where I'm
3 building, he says, How are you going to put this building
4 together? Where is your plans? I show it to him. It's
5 almost zero, the specifications. Just numbers for me,
6 columns. But the column doesn't say what thick and what
7 wide. Just give me the height.

8 So the bank, he say, Mr. Yusuf, I'm sorry, we
9 don't do business that way. We have to have somebody
10 professional plan with full specifications. I can see your
11 plan approved, I can see the steel here, but it's -- you
12 don't have the proper material or record to take to my board
13 of directors to approve this loan in the millions.

14 Is that correct?

15 **A.** That's absolutely correct.

16 **Q.** Then on the next page, Page 14 of this deposition,
17 But before I continue, I'm going to -- I would like to go
18 back a little bit more to clear something. When I was in
19 financial difficulty, when I was in financial difficulty, my
20 brother-in-law, he knew --

21 And your brother-in-law would be Mohammad
22 Hamed, correct?

23 **A.** That's correct.

24 **Q.** -- I shouldn't -- he start and to bring me money,
25 okay? He own a grocery store, Mohammad Hamed, while I was

FATHI YUSUF -- DIRECT

1 building, and he have some cash. He knew I'm tight. He
2 start to bring me money, bring me, I think, 5,000, 10,000.
3 I took it. After that, I say, Look, we family. We want to
4 stay family. I can't take no money from you because I don't
5 see how I can pay you back. So he insisted, Take the money.
6 If you can afford to, maybe pay me. If you can't, forget
7 about it, okay? He kept giving me. I tell you, under this
8 condition, I will take it. I will take it.

9 That's correct?

10 **A.** That's absolutely correct.

11 **Q.** He kept giving me until 200,000. Every dollar he
12 make profit, he give it to me. He win the lottery twice, he
13 give it to me.

14 **A.** May I say something there?

15 **Q.** Yeah.

16 **A.** Maybe I made a mistake. It was 225.

17 **Q.** Okay.

18 **A.** Even though, you'll see it someplace else, it's
19 225 he gave me.

20 **Q.** Every dollar --

21 **A.** Under no one condition whatsoever, just as a
22 family. Not under any kind of condition whatsoever. And I
23 don't take no money from nobody, unless I know how I can pay
24 it back, because I am in the business not to lose relatives
25 and friend. My enemy do not lend me money.

FATHI YUSUF -- DIRECT

1 **Q.** All right.

2 **A.** My -- only my family and my dearest friend, it's
3 the one who care about me, is the one who lend me money.
4 That's the reason I took it, under one condition. If I
5 don't have it, Mr. Mohammad, I don't want to buy -- bust my
6 head in the wall, try to raise your money. Even though with
7 no signature. Signature in my -- in my philosophy doesn't
8 mean anything. It mean the will of a person. And based on
9 that, I took the man money.

10 Please go ahead.

11 **Q.** Okay. So let me -- I'm going to read and just ask
12 you if this is true: Every -- every dollar he -- he made
13 profit, he give it to me. He win the lottery twice, he give
14 it to me. All right? At that time, the man have a little
15 grocery, they call it Estate Carlton Grocery. Very small.
16 Less than 1,000 square foot, but he was a very hard worker
17 with his children. And it was, you know, just like a
18 convenience mom-and-pop store. He was covering expenses and
19 saving money.

20 Is that correct?

21 **A.** Absolutely correct.

22 **Q.** I say, Brother-in-law, you want to be a partner
23 too? He said, Why not?

24 Is that true?

25 **A.** That's true.

FATHI YUSUF -- DIRECT

1 **Q.** You know, as a family, we sit down, and says, How
2 much more can you raise? Say, I could raise 200,000 more.
3 I said, Okay. Sell your grocery, I'll take the 200, 400,
4 you will become 25-percent partner.

5 Is that correct?

6 **A.** Make a -- I correct it the 200 to 25, and now
7 you're saying an additional 200. No, additional 175.

8 **Q.** All right.

9 **A.** But it's still, we back to the same total of 400.

10 **Q.** And you then said you would make him a partner at
11 25 percent?

12 **A.** I will make him a partner in the profit only.

13 **Q.** Okay. So, and you say profit only, you're talking
14 about profit in the supermarket?

15 **A.** Yes.

16 **Q.** So we end up, I'm 25 percent, my two nephew 25
17 each, and my brother-in-law, Mohammad Hamed, 25 percent.

18 And that's in the supermarket, correct?

19 **A.** Yes.

20 **Q.** Okay. I don't recall the year, it could be '83 or
21 '84, but at least, thanks God, it's the year that Sunshine
22 Supermarket opened, because his supermarket is the one who
23 carries these two young men and my brother to go into the
24 supermarket with me. So I have their money, I finish the
25 building.

FATHI YUSUF -- DIRECT

1 Is that correct?

2 **A.** Yes.

3 **Q.** All right. On the next page, then, But when I
4 been denied, I have to tell my partner what's going on.
5 I've been entrusted to handle the job perfect, and I'm
6 obligated to report to my partner to everything what
7 happened. I told my nephew, I told my partner, Hey, I can't
8 get a loan, but I'm not giving up. So two, three days
9 later, my two nephews split, say, We don't want to be with
10 you no more, and we want our money. I say, I don't have no
11 money to pay you. The money's there, but if you want to
12 leave because I default, you're free to leave.

13 Is that correct?

14 **A.** That's absolutely correct.

15 **Q.** How we -- how we going to get pay? I says, The
16 shopping center is 50 percent owned by your uncle and
17 50 percent by me. I have to feed my children first, and
18 whatever left over, I'll be more than happy to give it to
19 you, okay? But what do you want us -- what do you want --
20 what do you want to pay us for the rent of our money? We
21 come to an agreement, I pay them 12 percent on their money
22 and \$150,000 default because I don't fill my commitment. I
23 accepted that.

24 Is that correct?

25 **A.** That's correct.

FATHI YUSUF -- DIRECT

1 **Q.** We wait until my partner, which is my brother,
2 came. He is an older man, and we came up to Mr. Mohammad, I
3 say, Do you want to follow them? He say, Yeah, I will
4 follow them, but do you want -- do you have any money to
5 give? I say, Look, Mr. Hamed. You know I don't have no
6 money. It's in the building. And I put down payment in
7 the -- in the refrigeration. So if you want to follow them,
8 if you don't feel I'm going to the best I can, if you want
9 to follow them, you're free to follow them. I'll pay you
10 the same penalty, 75,000. I will give you 12 percent on
11 your 400,000.

12 Is that what you offered?

13 **A.** That's absolutely correct.

14 **Q.** He says, Hey, if you don't have no money, it's no
15 use for me to split. I'm going to stay with you. All
16 right. Okay. I say, Okay. You want to stay with me, fine.
17 I am with you, I'm willing to mortgage whatever the
18 corporation own. The corporation owned by me and my wife at
19 that time.

20 Is that correct?

21 **A.** Yes.

22 **Q.** And my partner only put up 400,000, that's all he
23 put in, and he will own the supermarket. I have no problem.
24 I told my partner, Look. I take you under one condition.
25 We will work on this, and I'm obligated to be your partner

FATHI YUSUF -- DIRECT

1 so long as you want me to be your partner, until we lose
2 800,000. If I lose 400,000 to match your 400,000, I have
3 all the right to tell you, Hey, we split, and I owe you
4 nothing.

5 Is that correct?

6 **A.** Yes. Can I comment on that?

7 **Q.** Certainly.

8 **A.** We almost lost the 800,000, but I was honest
9 enough, I was still in the talent, but I was honest enough,
10 as soon as I find there is a light I -- we could go through,
11 I would never try to get rid of my partner, because my
12 partner came with me with all good faith, and I prove it to
13 everybody that I'll stay with him in good faith. I kept
14 him, even though I could have let him go, but I'm not that
15 type of person.

16 **Q.** Okay. So over on the next page, it says, He says
17 do whatever -- do whatever you think is right. I tell him,
18 You want my advice? I'll be honest with you, you're better
19 off taking 50 percent. So he took the 50 percent.

20 **A.** That's correct.

21 **Q.** Okay. Then there came a time that the two of you
22 entered into talks with Plaza Extra in St. Thomas, is that
23 correct?

24 **A.** Excuse me?

25 **Q.** There came a time that the two of you began to