

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 OPPOSITION TO YUSUF'S MOTION FOR SURREPLY
AS TO CLAIM H-13**

Introduction

First, If the Special Master grants this motion, it is essentially a concession that the briefing schedule agreed to and ordered should simply be tossed out—and a new one should be entered to allow 5 briefs per issue rather than the present 3. Yusuf has made this a routine practice, without any real basis other than "we want the last word".

Second, a surreply under these circumstances is absurd. This motion is based on facts alleged by testimony of counsel, unsupported by declaration or sufficient evidence.

Third, this motion is predicated on a series of "facts" that are not only unsupported, they are simply wrong.

Argument

1. *Yusuf suggests the surreply be allowed because Hamed made "new arguments"* Hamed's inclusion of transcript testimony (available to both parties for a decade) about the nature of the conversion to an S-Corp in 1999 is simply a *REPLY* to the ridiculous contentions (unsupported by any declarations or documents) in Yusuf's opposition that this differential payment of Yusuf's son's taxes (1) had been going on for "decades" (false) or was (2) somehow part of the original agreement or early conduct (false) or was (3) allowed by a later amendment of the partnership agreement (false). Hamed's reply simply demonstrated that the only actual evidence demonstrates that none of these three statements are true. Facts in reply are allowed in replies if they meet the argument in the opposition. Thus, the real point to Yusuf's motion is that Yusuf's counsel repeatedly makes such statements in papers with no support, and when Hamed responds in reply (raising no new 'issues'), Yusuf labels it "new", filing yet another surreply motion.

2. The "facts" Yusuf wishes to introduce are neither new nor facts

Each of the statements below is either demonstrably false, or is worded to obscure the critical, operative truth of the matter;

A. At page 4 of the proposed surreply:

IRB agreed that a payment of approximately \$6.5 million would cover the income tax liabilities of the shareholders of United, **the lion's share of which were liabilities arising out of Plaza Extra profits** that were imputed to them pro rata (in accordance with their percentage shareholdings in United). United made that payment in June 2013. (Emphasis added.)

Sounds good, but the use of the phrase "lion's share" is there to obscure the fact that **ALL** of the actual evidence of record, and **all** of the exhibits attached to this motion and opposition, state that for just the years 1999-2001, Partnership funds **were** used to pay the personal income taxes of Yusuf family members for totally unrelated income. The U.S. Attorney stated this (Exhibit 1), and by this "lion's share" statement, Yusuf admits it. Nor is it disputed that this unrelated income was not only not income on the grocery operations—it was not even for other United income. It was whatever income those family members had from all other, totally unrelated investments¹—some of it extra-territorial.

So what Yusuf actually is trying to file is a surreply to say (yet again) that in 1999, totally unrelated to anything that had been done in the first 13 years, totally contrary to all past practices, totally contrary to the partnership agreement and without any necessary amendment, for a very short period he *unilaterally* started

¹ See Exhibit [p. 67]

MS. HENDRICKSON: And there was **other income on some of their [the Yusuf Family members'] returns. So, if they had other investments and things like that. So I think that is a fair representation to say United paid for other taxes that the individual shareholders owed on top of the flow through based on United's operations.** * * *

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

MS. HENDRICKSON: Yes. * * * * (Emphasis added.)

paying his family's admittedly, totally unrelated income taxes out of grocery store receipts, and because tax on grocery store income was ALSO being paid for, BUT was the larger of the two amounts, payment of Yusuf's family's private, unrelated investment and other incomes should be ignored. That is what he wants a surreply for, to make the same old argument but emphasize the phrase "lion's share".

B. At page 4

Given the difference in the ownership structure, with the partnership later overlaid upon United, it is virtually impossible to true up the taxes with any exactitude after the fact. Nor is there any equitable reason to do that. **Mohammad Hamed benefitted from the U.S. Government's theory that United operated the Plaza Extra stores, because otherwise, as a partner, he would have necessarily been named as a defendant in the criminal case.**² (Emphasis added.)

So, there it is. Despite all of the smokescreen and filings about needing the Hamed's early taxes and computing 'relative' amounts of 2002-2012 taxes—we now have Yusuf's clear admission that the 2013 assessment was not, and could not be based on the actual 2002-2012 taxes.....it was simply a settlement of all possible outstanding taxes that were the result of the operations.

[I]t is virtually impossible to true up the taxes with any exactitude after the fact.

Hamed asks the Master to stop and re-read this a couple of times.

Moreover, this proves what Hamed has repeatedly said: Nobody ever tried to "true up the taxes with any exactitude **in 2013.**" Instead there was settlement that was assessed and implemented **AFTER** Judge Brady's April 25, 2013 factual findings that the actual entity for grocery operations was the Partnership and that United had simply

² The hidden argument here is that since Mohammad Hamed was not charged, he should consider himself lucky and not complain about Yusuf paying his family's taxes.

been an operating agency supplied by Yusuf. (Which leads to the misleading statements in the next section.)

C. At page 4

Judge Brady's determination in late 2014 that there was a partnership is contrary to the ownership structure that informed and governed the resolution of the criminal case by the United States.

This misleading. It seeks to substitute "Judge Brady's determination" for the fact that his April 2013 factual findings were issued and known to all well BEFORE the tax settlement assessment and payment in 2013. The USVI and federal government were fully and completely aware of the situation when the events of 2013 took place. **More importantly, as the U.S. Attorney stated, those amounts for both families were being paid prior to Judge Brady's findings, but only stopped AFTER Judge Brady's ruling.** That should end this motion dead in its tracks. Thus, the perplexed testimony by the U.S. Attorney, in the exhibits (**Exhibit 1** hereto) , that:

[p. 123] HENDRICKSON: The fact that the United won't pay for the Hameds, that is a separate issue. In February of 2011, yes, they paid for everyone's. Now, in June, July of 2013, United does not agree to pay, but the Hameds, as taxpayers, are legally obligated to report income and pay taxes. . . .

The only relevant "past conduct" was that **all of the taxes for both families were being paid** from Partnership funds up until 2011. What was the only thing that changed in 2012? Yusuf tried to take the stores and stopped the payments for Hamed and his family.

Conclusion

Yusuf seeks to suggest that the Special Master consider (1) the same tax computations for the 2002-2012 tax period that he now, finally admits cannot be calculated and never were, or (2) the **2010** negotiation—long before the government and parties knew there was a dispute about whose taxes were being paid. He asks that the original partnership agreement and the course of dealing for the first 15 years be ignored.

He asks that the fact that these taxes were paid for everyone up to 2011 be ignored. In short, he asks the Special Master to ignore the facts and documents, and instead rely on what Yusuf did for just the years 1999-2001 absent any amendment. With nothing new to add, he asks for a surreply with no new evidence, on the (erroneous) testimony of counsel.

The motion to allow the surreply should be denied, or all motions should have five filings rather than three from now on

Dated: July 15, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 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. CROIX

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,

Plaintiffs,

v.

FATHI YUSUF MOHAMAD YUSUF,

aka Fahti Yusuf

WALEED MOHAMMAD HAMED,

aka Wally Hamed

WAHEED MOHOMMAD HAMED,

aka Willie Hamed

MAHER FATHI YUSUF,

aka Mike Yusuf

NEJEH FATHI YUSUF, ISAM YUSUF, and

UNITED CORPORATION,

dba Plaza Extra,

Defendants.

Criminal No. 2005-15

July 16, 2013

3:20 p.m.

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE DISTRICT JUDGE

WILMA A. LEWIS

Ex. 1

1 APPEARANCES:

2 LORI A. HENDRICKSON, ESQ.,

3 FOR THE GOVERNMENT

4

5 RANDALL P. ANDREOZZI, ESQ.,

6

7 FOR DEFENDANT WALEED HAMED

8

9 PAMELA COLON, ESQ.,

10

11 FOR DEFENDANT WAHEED HAMED

12 JOSEPH DIRUZZO, ESQ.,

13 FOR UNITED CORPORATION

14 NIZAR DEWOOD, ESQ.,

15 FOR FAHTI YUSUF

16 VALERIE LAWRENCE, RPR
17 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 VIBIB. 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 there
3 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

3

4 I, Valerie Lawrence, certify that the foregoing is a
5 correct transcript from the record of proceedings in
6 the above-entitled matter this 27th day of August,
7 2013.

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Valerie Lawrence

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Valerie

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Lawrence

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