

**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,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
)	
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
<u>Defendant.</u>)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
<u>Defendant.</u>)	
FATHI YUSUF and)	
UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
)	
Plaintiffs,)	
v.	)	ACTION TO SET ASIDE
	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED,)	
Waleed Hamed as Executor of the Estate of)	
Mohammad Hamed, and)	
THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
<u>Defendants.</u>)	

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed's Discovery as follows:

1. Interrogatory No 3 – Relating to H-1, Dorthea Condo

Dorthea Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea Condo.
2. The full amount of \$1.5 million for the sale was received.
3. I am currently in possession of \$1,350,000 of the total amount of those proceeds in the form of another asset. The remaining \$150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant. Attached is the document that reflects that payment (FY015136). The breakdown is: \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his 1/2 of the 1,500,000) minus \$150,000 paid to the Batch Plant from Hamed's portion).
4. I believe that I provided the handwritten "Dorothia" document to Willy but I do not recall when.
5. It is my belief that the principle payments were received prior to 2006. However, I cannot say this for sure.

**2. Interrogatory No. 29 and Requests for Production of Documents No.s 21 and 34
– Relating to Y-2 and 4 relating to rent for Bays 5 and 8**

Yusuf and United provide the following supplemental response to Interrogatory #29 and Requests for Production of Documents #21 and #34:

United has made a claim for past due rent for Bays 5 and 8 which were leased by Plaza Extra East at various points in time and utilized as extra storage. Yusuf set forth in his Declaration dated August 12, 2014 the square footage of each Bay, the period of the rental and the price per square foot. Again, Yusuf incorporates his August 12, 2014 Declaration together with the attached Chart as responsive to Interrogatory #29. In addition, attached is a floor plan of the United Shopping Center reflecting the location of Plaza Extra East and the other commercial/retail storefronts referred to as Bays (FY015135).

A. Bay 5 – Period May 1, 1994 through July 31, 2001

Bay 5 is close to the entrance of Plaza Extra East and is one of the most desirable storefronts in the United Shopping Center given its location and visibility. From 1987 to the time of the fire in 1992, Bay 5 was rented to a pharmacy. There is no copy of the lease for this period as it was destroyed in the fire. During this 1987-1992 timeframe, Plaza Extra East was utilizing a series of trailers as warehouse space to provide additional storage for inventory. There were eight trailers, four on the bottom and four on top. However, this storage system of trailers was very cumbersome and inefficient to access and effectively utilize. As Plaza Extra East was being rebuilt and then reopening, it needed additional space for storage which was easier to access.

As described more fully below, Plaza Extra East began utilizing Bay 8 for storage upon reopening in May, 1994. However, additional space was still needed. Mike Yusuf and Waleed Hamed broke through a cement block wall between Bay 4 and 5 to utilize the space in Bay 5 for sodas. They made an opening big enough for the forklift to go through. Their efforts demonstrate knowledge by Hamed that the space was being used. The space was utilized by Plaza Extra East from May 1, 1994 through July 31, 2001 for storage and primarily for the storage of sodas. Mr. Yusuf was not happy to discover that this particular Bay was needed for storage space because he would have preferred the space to be used as a retail store. In a conversation with Waleed Hamed, Mr. Yusuf explained that he would prefer to use the space to lease to retail but that if Plaza Extra East was going to use it for storage and needed the space, then it would have to pay rent, to which Waleed Hamed responded that he agreed. As Yusuf was in charge of setting the price and collecting the rent, he set the price at the same amount as other commercial tenants for that space. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

At some point in the first half of 2001, Mr. Yusuf explained that Plaza Extra East cannot keep using Bay 5 for warehouse space as it is better utilized as retail space. It was helpful to the partnership to have other retail stores in the United Shopping Center which drives more customers to the area and then into Plaza Extra East. However, using such visible space for storage did not help increase the traffic to the center and by extension to Plaza Extra East. As Bay 5 is a highly visible space, the better use of the space was for retail. Beginning on September 1, 2001, United leased Bay 5 to a retail tenant operating as "Diamond Girl." A copy of the lease is attached to demonstrate the end of the period that Plaza Extra East was utilizing Bay 5. (Bates FY015138-75). The lease with Diamond Girl was for ten years. In December 2011, Diamond Girl entered into another lease with United and expanded their space to use Bay 4 in addition to Bay 5. A copy of that lease is also attached. (Bates FY015176-211). These leases reflect the price charged for the space and the ending time period of Plaza Extra East's occupancy of Bay 5. There is no written lease for Plaza Extra East's use of the Bays 5 or 8, just as there was no written lease for the use of space to house the Plaza Extra East store. Waleed Hamed agreed to this arrangement. The total amount due for the period of rent for Bay 5 is as set forth in Yusuf's August 12, 2014 Declaration for \$271,875.00.

B. Bay 8 – May 1, 1994 through September 30, 2002 ("First Bay 8 Rent")

Bay 8 is located in the corner of the shopping center and is a double bay. It is a less desirable location as a retail store given the limited storefront and lack of visibility being in the corner of the center.

From 1987 to the time of the fire in 1992, Bay 8 was rented to Ali's Hardware. Ultimately, United had to evict Ali Hardware at some point prior to the fire. Mike Yusuf recalls the scenario where the renter threw the keys to Mike as they were rebuilding the store after he had been evicted. The eviction was handled by Carl Beckstedt. Attached is an unsigned "Satisfaction of Judgment" reflecting the action brought against Ali Hardware for the collection of back rent demonstrating the date the suit was filed as 1993. (Bates FY01537). As described above, the storage system of stacked trailers used by Plaza Extra East at this time was inefficient. As Plaza Extra East was being rebuilt, it needed the additional space for storage.

Following the fire, Plaza Extra East reopened in May 1994 and began utilizing Bay 8 for additional storage. Given its less desirable location as a retail store, its large size and easy access to the back of the bay with a roll-down door, it was suitable and more feasible to use as a warehouse. Bay 8 was occupied by Plaza Extra East from May 1, 1994 through September 30, 2002. As the space had previously been rented to a third party but was now being utilized by Plaza Extra East, Mr. Yusuf discussed with Waleed Hamed that Plaza Extra East would need to pay rent for the use of this additional space and he agreed. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

From October 1, 2002 to April 1, 2008, the space was then rented to an entity called Riverdale which is a food wholesaler who was not interested in utilizing the space as retail operation. A copy of the lease for Bay 8 is attached to reflect when the First Bay 8 Rent period ended and the amount charged for this space. (Bates FY015212-247). The total amount due to United for the First Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$323,515.63.

C. April 1, 2008 through May 30, 2013 ("Second Bay 8 Rent")

When the lease with Riverdale ended, Plaza Extra East began using the space for storage. As with the earlier period of use and the use of Bay 5, Yusuf discussed with Waleed Hamed that Plaza Extra East would pay rent on the same terms as before and Waleed Hamed Agreed. The total amount due to United for the Second Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$198,593.44. As before, United allowed the rent for this period to accrue rather than demanding payment so as to allow the partnership greater liquidity.

After May 30, 2013, United again rented Bay 8 to Riverdale or a relative of the individual who rented as Riverdale from that point forward.

There are no written leases between Plaza Extra East and United as to renting Bay 5 and Bay 8. At the time, the stores were all operating as United. However, as described above Mr. Yusuf discussed the matter with Waleed Hamed and he agreed to pay rent for the space utilized. Collection of the rent was deferred for Bays 5 and 8, just as it was deferred for the Plaza Extra East Store. *See* Yusuf Declaration of August 12, 2014, ¶8.

As to the period after this lawsuit was filed, United shows that Plaza Extra East continued to occupy the space until it was rented to the tenant associated with Riverdale. Mr. Yusuf considered the partial rent payments made by the partnership as to Bay 1 as a partial payment of the total rent debt due which included the rent for Bays 5 and 8. When Plaza Extra East was using either Bay 5 or 8, their use and occupancy was continuous during that period of time.

3. Interrogatory No. 30 – Relating to Y-12 Jordanian Property and Accounts

Yusuf supplements his responses to Interrogatory No. 30:

Over the course of time, Mr. Yusuf, on behalf of the partnership, purchased five different properties in Jordan (the “Initial Five Properties”) and put in joint names of Hamed and Yusuf. Two of these properties are still owned by them jointly, two others were sold with the proceeds reinvested in a larger number (approximately 40 residential properties) and one Hamed transferred his interests to Mr. Yusuf pursuant to an agreement which also required the transfer of property in St. Thomas.

A. Original Five Properties in Joint Name of Yusuf and Hamed

Property 1: One of the Initial Five Properties was purchased for approximately 3 million Jordanian pounds around 1999 (“Property 1”). It was titled jointly in both Yusuf and Hamed’s name. The parties still own it. It is now worth approximately at least 30 million. There is no dispute relating to this property and it is not the subject of Yusuf’s Claim Y-12.

Property 2: Another of the Initial Five Properties was purchased for approximately 240,000.00 Jordanian pounds (“Property 2”). It was also titled in jointly in both names. Property 2 was later sold for 1 million Jordanian pounds. The proceeds from the sale of Property 2 and another of the Initial Five Properties were used to purchase additional properties more fully described below. Property 2 is not in dispute and is no longer owned by the partners.

Property 3: Another of the Initial Five Properties was purchased for 858,000.00 Jordanian pounds (“Property 3”). It was also titled jointly in both names. Subsequently after Mr. Yusuf determined that the Hamed’s had removed funds without disclosing their receipt, Mr. Yusuf and Mr. Hamed entered into an agreement where Mr. Hamed agreed to provide his half of this property to Mr. Yusuf dated July 18, 2011, Exhibits O and S are the documents that reflects that transfer and agreement.

Property 4: Another of the Initial Five Properties was purchased for 520,000.00 Jordanian pounds. As with all of the Initial Five Properties, it was put in both names. Property 4 is located near an airport. At some point, a portion of Property 4 was needed for the roadway near the airport and the appropriate governmental entity procured the property under an eminent domain basis and ultimately paid 2 million Jordanian pounds. The remainder of the property was sold for 3.3 million Jordanian pounds. The proceeds from these transfers of Property 4 in combination with the proceeds from the transfer of

Property 2 were combined and used to purchase a larger number of residential properties more fully described below.

Property 5: Another one of the Initial Five Properties was purchased in the early 1990's for approximately 1 million Jordanian pounds. It too was in the joint names. The parties still own this particular property. Property 5 remains jointly owned and is not the subject of Yusuf's Claim Y-12.

B. Sale of Properties 2 and 4 and Reinvestment into 40+ Residential Properties

With the sale of Properties 2 and 4 for a total of approximately 6.3 million Jordanian pounds, the parties purchased approximately 40 pieces of residential real estate ("40+Properties"). They 40+ Properties are not contiguous properties but are located in the Ahman area and all of the purchases were done during a single trip Mr. Yusuf took to Jordan. Although jointly owned, the 40+ Properties were put in Mohammad Hamed's name solely. However, the parties understood and agreed that Mr. Yusuf had a one-half interest in these properties. This timeframe would have been around 2008.

Sometime in 2011, Mr. Yusuf requested that the 40+ Properties now be titled to reflect his one-half interest. During a trip to Jordan, Hamed and Yusuf coordinated to transfer most but not all of these 40+ Properties to reflect their joint ownership. As described in Yusuf's accounting claim "[A]ll but two of these properties were jointly titled in the names of Hamed and Yusuf." Yusuf is not looking to liquidate these properties but rather "respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these [two remaining] parcels and to recover the \$434,921.37" in costs incurred relating to these 40+ Properties. The costs are set forth in Exhibit R to Yusuf's Original Claims Accounting.

C. Transfer of Property from Hamed to Yusuf Per Agreement

After Yusuf's discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997, Mr. Yusuf agreed, in order to resolve that issue only, that Hamed would convey to him two properties. One of the properties was Property 3 described above and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas.

The document reflecting Hamed's transfer of his interest in Property 3 to Yusuf is Exhibit O and Exhibit S which is the English translation. Property 3 is Land Lot No. 310. On Bates page FY000272-9 of Exhibit O, the words "Lot 310" is located in the middle of a residential community of approximately one million in population. It is a very large plot in the middle of all the smaller plots. Hamed's allegations in the 377 case at Paragraphs 43, 44, 143, 145, 153, 154 and 155 all relate to Property 3 and Hamed's transfer of it

to Yusuf. The Hamed's value that piece of property – Property 3 at \$10,000,000.00. However, Mr. Yusuf estimates it is closer to only \$8,000,000.00. Therefore, the claims in the 377 case do, in fact, relate to the same piece of property (“Property 3”) and any alleged claims that Hamed has relating to Property 3 is properly adjudicated in this proceeding.

Yusuf is seeking exactly what he set forth in his claims accounting that “[A]lthough Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in” Property 3 in the 377 case. Yusuf is seeking an order, which binds Hamed's estate by the agreement signed by Hamed at Exhibits O and S. In that agreement entitled “Written Declaration and Undertaking,” Hamed confirms that he has the requisite mental faculties to convey his interests in Property 3 to Yusuf, that he intends to give him all of his financial and other interests in the property. Hamed also states that:

...I recommend my folks and legal heirs after me not to oppose Mr. Fathi [Yusuf] in the said land due to his right in it and I have signed this declaration in three originals while enjoying my full mental power that are legitimately and legally considered and drop my right to claim the falsehood of the declaration and/or the circumstances surrounding the execution of this declaration and/or any rebut arising from or relating to this declaration and/or its applications.

This was signed by Mohammed Hamed on July 18, 2011.

Ultimately, Yusuf had agreed to resolve the misappropriation by the conveyance of Property 3 and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas. The 9.31 acres are currently titled in Plessen but should be conveyed to Mr. Yusuf. Likewise, any claims that Hamed would have to the ½ acre entrance parcel should be extinguished.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 15, 2019

By: s/Charlotte K. Perrell
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CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of January, 2019, I caused the foregoing a true and exact copy of the foregoing **SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY** to be served upon the following via Case Anywhere docketing system:

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EXHIBIT 1

FY 015045 – 015134