

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,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

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

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED MOTION AND MEMORANDUM FOR SUMMARY JUDGEMENT
RE HAMED REVISED CLAIMS AS TO H-16—NEJEH YUSUF'S USE OF
PARTNERSHIP RESOURCES AND H-34—RENTS COLLECTED, BUT NOT
DEPOSITED IN THE PARTNERSHIP ACCOUNT**

I. Introduction

Hamed moves for summary judgment on two related claims:

1. H-16—Nejeh Yusuf's use of Partnership resources for his non-Partnership businesses and
2. H-34—rents collected, but not deposited in Partnership accounts.

II. Applicable Standard of Review

The applicable standard of review for summary judgment is as follows: 1) the movant has the burden to demonstrate there is no genuine issue of material fact; 2) the burden shifts to the non-moving party to present contrary evidence showing a genuine issue for trial and 3) the reviewing court must consider the evidence in a light most favorable to the non-moving party. *Rymer v. Kmart Corp.*, 68 V.I. 571, 575–76, 2018 WL 461388, at *2 (V.I. Jan. 18, 2018)

III. Facts¹

A. *Nejeh Yusuf's use of Partnership resources for his non-Partnership businesses (H-16)*

As he has testified at deposition, in late 2012, Nejeh Yusuf formed a business arrangement with two brothers, the Mansours. (SOF ¶ 4) The business arrangement included the following businesses: Wala ice plants, Wala paintball, Sprint stores, Western Union, Wireless Tech, a restaurant, a Hookah bar and a kiosk in the mall. (SOF ¶ 4) Nejeh Yusuf testified on January 22, 2019 that his business arrangements with the Mansour brothers was continuing as of the date of his deposition. (SOF ¶ 8)

During that testimony on January 22, 2019, Nejeh Yusuf confirmed that he purchased security cameras for Wireless Tech. (SOF ¶ 9) He also admitted that he used a Plaza

¹ Hamed has filed his statement of facts separately. It is incorporated herein and references to it are denoted as "SOF."

Extra container from Miami, FL to ship the cameras to St. Thomas, VI. (SOF ¶ 9) NejeH Yusuf testified at one point that the security cameras "belong to myself and Wireless Tech" and at another point testified that ". . . the cameras came in. **I bought it for the purpose of Plaza Extra saving funds, because we were buying it for over \$150 a camera from the local people.**" (SOF ¶ 9)

In an additional unrelated incident, on January 22, 2019, NejeH Yusuf did admit during his deposition testimony that he also kept a power washer belonging to Plaza Extra Tutu:

A.[NEJEH YUSUF]. . . .There was a -- a issue with a pressure washer that was at my house that I borrowed before the -- the split, and the manager called me, Johnny Gumbs, and says, We want the pressure washer back. I said, It's at my house. You want it, you can come get it. I'm not bringing it.

* * * *

Q. . . .And where's the pressure washer now?

A. I think it's still there probably rotten.

Q. At your house?

A. Probably. (SOF ¶ 11)

In further support of these acts, Waheed ("Willie") Hamed testified on January 22, 2019 that NejeH Yusuf took security cameras, a laptop, a computer, a monitor and a TV belonging to Plaza Extra-Tutu shortly before the sale of the Tutu store. (SOF ¶ 10) Willie Hamed said that only NejeH Yusuf could have taken the items because no one else in the store had access to the items other than Yusuf and himself. (SOF ¶ 10) He also stated that Fadi Mansour related his conversation with NejeH Yusuf where Yusuf told him that he had stolen the cameras. (SOF ¶ 10)

Similarly, Willie Hamed also testified that on the day of the sale of the Tutu store, he brought to Special Master Ross's attention that these items (the security cameras, laptop, monitor and TV) had been taken by NejeH Yusuf shortly before the sale. Special Master Ross directed him to make a claim for the items. (SOF ¶ 10)

B. Rents collected by Nejeah Yusuf, but not deposited in Partnership accounts (H-34)

On January 22, 2019, Nejeah Yusuf admitted during his deposition that the rent payments from the Triumphant Church and an auto body shop belonged to Plaza Extra, **but his father, Fathi Yusuf, told him to stop depositing the rents into the Plaza Extra account towards the end of the Partnership.** (SOF ¶ 12) Nejeah Yusuf testified that he continued to hold on to the rent payments after the end of the Partnership and did not deposit the collected rent payments into the Partnership bank account. (SOF ¶ 12)

With regard to collections prior to this directive from Fathi, Nejeah Yusuf explained the “pre-dispute” process for collecting the rents.

1. He said the renters would come to the service desk at Plaza Extra to pay the rent,
2. the service desk would call Yusuf to the desk,
3. Nejeah would then write a receipt for the renter showing the rent was paid and
4. Nejeah would then deposit the funds into the Plaza Extra account. (SOF ¶ 12)

Receipts left at the Plaza Extra-Tutu store showed that the Triumphant Church was paying rent of \$300 per month. (SOF ¶ 13) A document summarizing the payments receipt showed the last collection date for the rent was April 2015. (SOF ¶ 13)

IV. Arguments

A. Hamed Revised Claim H-16—Nejeah Yusuf took Plaza Extra-Tutu assets that should be returned

Nejeah Yusuf testified that he took a power washer from Plaza Extra Tutu. This is undisputed. (SOF ¶ 11) That power washer should be returned to Plaza Extra Tutu.

Nejeah Yusuf also testified that he used Plaza Extra containers to ship security cameras for Wireless Tech, a non-Partnership business from Miami, FL to St. Thomas. (SOF ¶ 9) He stated that some cameras belonged to Wireless Tech and some of the

cameras were purchased for Plaza Extra-Tutu. (SOF ¶ 9) They too must be returned or the Partnership reimbursed.

Willie Hamed testified that just prior to the sale of the Plaza Extra-Tutu store, NejeH Yusuf took items from an area of the store that only he and NejeH Yusuf had access. (SOF ¶ 10) The items taken were the security cameras, a laptop, a monitor and a TV. (SOF ¶ 10) These too must be returned or the Partnership reimbursed.

Thus, Hamed now requests the return of the power washer and the security cameras, laptop, monitor and TV missing from Plaza Extra-Tutu as they are Hamed's property.

B. Yusuf's should deposit all rents collected from the Triumphant Church and the auto body shop into the Partnership account.

NejeH Yusuf admitted that he has continued to collect rents from the Triumphant Church and an auto body shop that belong to the Partnership. (SOF ¶ 12) He also admits that his father, Fathi Yusuf, told him to stop depositing the rents into the Partnership account after the stores split. (SOF ¶ 12) A sheet summarizing payments to Triumphant Church shows the last rent collected and deposited in the Partnership account was on April 2015 and the rent was \$300 per month. (SOF ¶ 13)

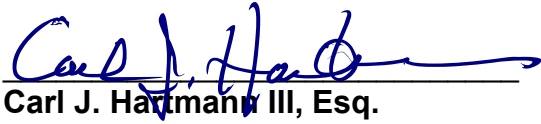
Hamed requests that the missing rents be returned to the Partnership bank account and that any future rents collected be deposited in the Partnership bank account. The Triumphant Church rent is \$300 per month. The amount collected from May 2015 to May 2019 is \$13,800.

V. Conclusion

In conclusion, Hamed requests that the following assets belonging to Plaza Extra-Tutu be returned: the power washer, the security cameras, laptop, monitor and TV missing from Plaza Extra-Tutu as they are Hamed's property. Hamed also requests that the rents collected by NejeH Yusuf for the Triumphant Church and the auto body shop belonging

to the Partnership be returned to the Partnership account and that any remaining rents collected be deposited in the Partnership account on an ongoing basis.

Dated: February 25, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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Handwritten signature of Carl J. Haddad in blue ink, written over a horizontal line.

CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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



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