**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

**MOHAMMAD HAMED,** *by his authorized***)**

*agent* WALEED HAMED, **)**

 **) CIVIL NO. SX-12-CV-99**

Plaintiff, **)**

**v. )**

 **) ACTION FOR DAMAGES,**

**FATHI YUSUF** and **UNITED CORPORATION, ) INJUNCTIVE AND**

**) DECLARATORY RELIEF**

**)**

Defendants. **) JURY TRIAL DEMANDED**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )**

**PLAINTIFF’S RULE 56.1 STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT I**

Pursuant to LRCi 56.1, the plaintiff hereby submits the following statement of undisputed facts in support of his motion for partial summary judgment:

1. The plaintiff has filed an amended complaint, seeking relief in Count I to establish that he has a partnership with Fathi Yusuf as to the operations and assets of the three Plaza Extra supermarkets known as Plaza Extra East (Sion Farm, St. Croix), Plaza Extra West (Plessen/Grove, St. Croix) and Plaza Extra St. Thomas (Tutu Park, St. Thomas.) (DE 15)
2. In the memorandum in support of their Rule 12 motion, the defendants make the following admissions (DE 29 at p. 3):

In 1986, due to financial constraints, Defendant Yusuf and Plaintiff Hamed **entered into an oral joint venture agreement.** **The agreement** **called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets**....**Plaintiff Hamed received 50% of the net profits thereafter.** (Emphasis added.)

1. In 2000, the defendant Fathi Yusuf, was deposed and made the following statements under oath (**Exhibit 1** at pp. 14:5-15:14) (emphasis added):

When I was in the financial difficulty, when I was in financial difficulty, my brother-in-law, he knew. I shouldn’t – he started to bring me money. Okay? He own a grocery, Mohammed Hamed, while I was building, and he have some cash. He knew I’m tight. He started 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 could pay you back. So he insisted, Take the money. If you can afford to, maybe pay me. And if you can’t, forget about it. Okay. He kept giving me. I tell him, Under this condition I will take it. I will take it. He kept giving me until $200,000. **Every dollar he make profit, he give it to me. He win the lottery twice, he gave it to me. All right? That time the man have a little grocery, they call 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 stores. He was covering expenses and saving money.

. . . .

I say, Brother-in-law, **you want to be a partner too? He said, Why not?** You know, as a family, we sit down. Says, How much more can you raise. Say, I could raise 200,000 more.  **I said, Okay. Sell your grocery. I’ll take the two hundred, four hundred. You will become 25 percent partner. So we end up I’m 25 percent, my two nephew 25 each, and my brother-in-law, Mohammad Hamed, 25 percent. I don’t recall the year, could be ’83 or ’84,** but at least thanks God in the year that Sunshine Supermarket opened, because his supermarket is the one who carries these two young men and my brother to go into supermarket with me. So I have their money, I finish the building.

1. Yusuf then continued testifying in this deposition by explaining how the other two partners decided to leave, resulting in plaintiff becoming his 50/50 partner in the supermarket, fully exposed to loss. (**Exhibit 1** at pp. 17-19:6-10) (emphasis added):

**Then, but when I been denied [for loans], I have to tell my partner what’s going on. I been entrusted to handle the job perfect, and I am obligated to report to my partner to anything that happened.** I told my nephews and I told my partner, Hey, I can’t get a loan, but I’m not giving up. So two, three days later **my two nephews split, say, We don’t want to be with you no more, and we want our money**. I say I don’t have no money to pay you. . . .

We come to an agreement, I pay them 12 percent on their money, and 150,000 default because I don’t fulfill my commitment. I accepted that. We wait until my partner, which is my brother, came. He’s an older man. And we cameup to Mr. Mohammed Hamed, I say, You want to follow them? He say, Yeah, I will follow them, but 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 refrigeration. But if you want to follow them, if you don’t feel I’m doing 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. (Emphasis added):

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. I say, Okay. You want to stay with me, fine.** I am with you, I am willing to mortgage whatever the corporation own. Corporation owned by me and my wife at that time. **And my partner only put in $400,000. That’s all he put in, and he will own the supermarket. I have no problem. I told my partner, Look, I’ll take you under one condition. We will work on this, and I’m obligated to be your partner as 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 don’t owe you nothing.**

They say, Mr. Yusuf, we knows each other. I trust you. I keep going. Okay. Now, I told him about the two partner left, **Mr. Hamed. You know, these two guys, they left, my two nephew, they was your partner and my partner. I give you a choice. If you pay penalty with me and pay the interest with me, whatever they left is for me and you.** But if I must pay them the one-fifty penalty and pay them 12 percent, **then Plaza Extra Supermarket will stay three-quarter for Yusuf and only one-quarter for you**.

He says, Do whatever you think is right.  ***I tell him, You want my advice? I be honest with you. You better off take 50 percent. So he took the 50 percent.”***

1. Yusuf concluded this portion of his testimony stating (**Exhibit** **1** at p. 20:10-12) (emphasis added):

*Every single Arab in the Virgin Islands knew* ***that Mr. Mohammed Hamed is my partner, way before Plaza Extra was opened.***

1. Yusuf explained later in his 2000 deposition why neither he nor the plaintiff ever reduced this partnership agreement to writing, testifying under oath (**Exhibit 1** at 23:18-24:1, 4-5) (emphasis added):

But I want you please to be aware that my partner’s with me since 1984, and up to now his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.

**But due to my honesty . . . my partner, he never have it in writing from me.**

1. When Yusuf was deposed in 2000, his own attorney made sure it was clear in his questioning of Yusuf that the plaintiff, Mohammed Hamed, had a 50% interest in the Plaza Supermarket stores even though they were often referred to as United Corporation Plaza Supermarket (See **Exhibit 1** at p. 69:13-21) (emphasis added):

Q. Okay. Okay. You were asked by Attorney Adams, when it says United Corporation in this [other, unrelated] Joint Venture Agreement, **in talking about Plaza Extra, talking about the supermarket** on St. Thomas, who owned or who was partners in United Corporation **Plaza Extra** at the time before you entered into that Joint Venture Agreement?

A. **It's always, since 1984, Mohammed Hamed**.

Q. Okay. So when it says United Corporation –

A. **It's really meant me and Mr. Mohammed Hamed.** (Emphasis added).

1. The defendants have also sent rent notices to the plaintiff regarding the Plaza Extra Store located in United’s shopping center at Sion Farm, St. Croix. See **Exhibit 2**.
2. In United’s opposition to the TRO, it confirmed this landlord-tenant relationship in the affidavit of United’s president, Maher Yusuf, stating under oath (DE 11-2 at ¶ 17) (emphasis added):

17. Most importantly, United has always charged rent for the use of part of its retail premises **by the Plaza Extra *Supermarket operation*** on Sion Farm, St. Croix. **Mohammed Hamed** has always understood that United would charge for the use of its retail space, **and would deduct the value of such rent in arriving at the net profits of the Plaza Extra Supermarkets**.

**Dated:** November 12, 2012 /s/Joel H. Holt, Esq.

**Joel H. Holt, Esq.**

 *Counsel for Plaintiff*

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**Dated:** November 12, 2012 /s/*Carl J. Hartmann, III, Esq.*

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**CERTIFICATE OF SERVICE**

 I hereby certify that on this 12th day of November, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

**Joseph A. DiRuzzo, III Nizar A. DeWood**

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 /s/*Joel H. Holt, Esq.*