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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
| vs.  **FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*.  vs.  **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,*  vs. | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­  **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*    vs.    **FATHI YUSUF**, *Defendant.* | Consolidated with  **Case No.: SX-2014-CV-278** |
| *­­­­­*­­  **FATHI YUSUF**, *Plaintiff*,  vs.  **MOHAMMAD A. HAMED TRUST***, et al,*  *Defendants.* | Consolidated with  **Case No.: ST-17-CV-384** |
| *­­­­­*­­  **KAC357 Inc.**, *Plaintiff*,  vs.  **HAMED/YUSUF PARTNERSHIP,**  *Defendant.* | Consolidated with  **Case No.: ST-18-CV-219** |
|  |  |

**HAMED STATEMENT OF FACTS RE HAMED REVISED CLAIM H-1 – FATHI YUSUF’S FAILURE TO PAY FUNDS RE SALE OF THE Y & S STOCK**

**RESULTING IN THE SALE OF THE DOROTHEA CONDOS AND LAND**

**STATEMENT OF FACTS**

1. On September 26, 1994, the Y & S Corporation, Inc. had its organizational meeting. It was being set up by the Yusuf and Hamed families in conjunction with a third person, Hakima Salem for the purchase of land and hurricane-damaged condos in Estate Dorothea. The signed minutes of the organizational meeting identified the following shareholders: Hakima Salem, 1000 shares, Najeh Yusuf, 500 shares, and Hisham Hamed, 500 shares. Fathi Yusuf was identified as president of the Y & S Corporation, Inc. (**Exhibit 1**)
2. On September 28, 1994, a special warranty deed was filed with the Recorder’s Office for the District of St. Thomas and St. John, US Virgin Islands and signed by Spread Eagle Paradise Holdings, Inc. as Grantor to Y & S Corporation as Grantee to purchase property in Estate Dorothea, the “Dorothea Property” as described in Exhibit A of the special warranty deed (**Exhibit 2**)
3. On September 28, 1994, a special warranty deed was filed with the Recorder’s Office for the District of St. Thomas and St. John, US Virgin Islands and signed by Spread Eagle Paradise Holdings, Inc. as Grantor to R & F Condominiums as Grantee to purchase real property described in Exhibit A to the warranty deed as a certain percentage of the common areas interest in the Dorothea Property. (**Exhibit 3**)
4. Thus, the Hamed/Yusuf portion of that Dorothea Property was jointly owned by Mr. Hamed and Mr. Yusuf, according to Fathi Yusuf, as he testified in his April 2, 2014 deposition:

A. [FATHI YUSUF] The transaction that we bought -- we was in

partnership with a third person, that we own 50 percent of

the Dorothia real estate -- a real estate in Dorothia, and

the other partner owned the other 50 percent.

Finally, I come to this decision to sell it

to my partner. He bought it at one-and-a-half million, and

this number below, it was an idea to Mr. Hamed what would

I -- I am counted for, up to the time I give it to him.

\* \* \* \*

Q. [Attorney Holt]. . .Dorothia is -- the 1.5 million were -- were

monies paid that belonged to you and -- and Mr. Hamed?

Yes.

\* \* \* \*

Q. [Attorney Holt]. . .So you start with the 1.5 million, which is

50/50, and then you start adding --

A. One million and a half is absolutely 50/50. I'm

not hiding anything. (**Exhibit 4**, pp. 99:12-19; 101:17-19: 105:4-7)

1. Fathi Yusuf stated that the Dorothea property consisted of about 51 acres of land and 23 damaged condos in his January 21, 2019 deposition.

A. [FATHI YUSUF] We bought from -- this property from the bank for

myself and Mohammad Hamed and Salem.

\* \* \* \*

Q. (Mr. Hartmann). . . .So when you and Mohammad

Hamed bought it in the form of Y & S Corporation, did you --

did you get -- did you buy some property?

A. What we bought is about 51 acre of bare land and

about 23 condo. (**Exhibit 13**, p. 12:4-5, 8-12)

1. On June 15, 2000, Fathi Yusuf resigned as a Director of the Y & S Corporation. (**Exhibit 5**)
2. On that same day, June 15, 2000, Hisham “Shawn” Hamed and Najeh Yusuf agreed to sell their stock in the Y & S Corporation to Hakima Salem in a signed Agreement of Sale of Stock. Key provisions of the Agreement of the Sale of Stock included the following:

1.Seller agrees to sell and transfer 1000 shares of common stock of Y & S Corporation, Inc. representing all of seller's stock ownership interest in that corporation, into escrow and after final payment, to register such transfer of shares upon the books of the corporation.

\* \* \* \*

3. Price: The amount due and payable hereunder shall be paid over a period of four (4) years in four equal yearly installments, of Two Hundred and Twenty Five Thousand ($225,000.00) Dollars. The first installment shall become due on January 15, 2001, and the remaining installments shall become due on January 15, 2002, January 15, 2003, and January 15, 2004.

\* \* \* \*

6. Escrow: The stock sold under this agreement shall be endorsed by the sellers to the Buyer and such stock shall be held in Escrow by Robert L. King, Esq. until all payments due hereunder have been paid to the Seller's Nominee. Robert L. King, as escrow agent shall deliver the stock certificates sold hereunder to the Buyer within 30 days of receipt of written notice from seller that the entire purchase price has been paid in full. The corporation shall immediately thereafter cause the transfer of shares to be registered upon the books of the corporation. . . . (**Exhibit 6**)

1. Also, in the June 15, 2000 signed Agreement of Sale of Stock, Fathi Yusuf (who had resigned his director position to be allowed to do so) became solely a “nominee” agent for the parties -- and had no independent basis for making decisions for Y & S or personally retaining the funds under the Agreement.

2. In consideration of the transfer of its 1000 shares of Y & S Corporation, Inc., Buyer agrees to pay to seller's nominee, Mr. Fathi Yusef of 9-C Princess Hill, St. Croix. . . (**Exhibit** **6**)

1. Fathi Yusuf testified in his January 21, 2019 deposition that he was the nominee who collected the money for the sale of the Y & S stock – and would eventually direct the release of the escrowed stock on payment.

Q. [Mr. Hartmann]. . . .I'm now showing you a document labeled

Claim H-1 Exhibit 6.

\* \* \* \*

Q. And you see Paragraph 2?

A. Paragraph 2?

\* \* \* \*

A. In consideration of the transfer of its 1000 share

of Y & S Corporation, ... Buyer agree to pay seller nominee,

Mr. Fathi Yusuf of 9-C Princess Hill. . . .

\* \* \* \*

Q. But you were going to collect the money for Y & S;

is that correct?

1. Yes, yes. Okay.

\* \* \* \*

A. So we're back to square one. A million and a

half. I will never deny that, the million and a half being

collected. (**Exhibit** **13**, pp. 16:16-17; 17:20-25; 18:5-6; 22:3-5)

1. On November 16, 2011, an email to Wael H. Abu Hazeema from lyad F. Al-Madhoun showed that the Bank of America, N.A. transferred $150,000 to the Bank of Palestine PLS as part of these funds for a “concrete factory.” (**Group Exhibit 14**).
2. Regarding the November 16, 2011 payment, Fathi Yusuf testified in his January 21, 2019 deposition that the purchaser of the Y & S stock, Mr. Salem, transferred $150,000 as partial payment **of the Y & S stock purchase price**. Yusuf further testified that **he directed** Mr. Salem to transfer the money directly and **Yusuf deducted the $150,000 from the $1.5 million Mr. Salem owed for the Y & S stock**.

A. [FATHI YUSUF] So we're back to square one. A million and a

half. I will never deny that, the million and a half being

collected.

Q. [Mr. Hartmann] And when did you collect the million and a half?

A. I collect by the way, one million three fifty.

The other one hundred and fifty, I told the Salem family to

transfer it into a concrete batch plant, because 10 years

earlier, Mohammad Hamed received that money to deliver it to

the batch plant and he never did deliver it, so --

Q. [J]ust so I'm clear,

you received money from Mr. Salem?

A. Yes.

Q. And when you received that money from him --

A. Yes.

Q. -- you sent that for the batch plant?

A. I did not receive the one hundred and fifty.

Q. You had him send it?

A. I direct them --

\* \* \* \*

A. -- to take it off of the bill and send it.

\* \* \* \*

Q. That one fifty was part of the 1.5 million?

Exactly.

\* \* \* \*

Q. But -- but the way you received it, you had

Mr. Salem send it, the one fifty?

The one fifty, Mr. Salem sent it through a bank

transfer.

\* \* \* \*

Q. . . . I've seen . . .

the transfer where Mr. Salem

transfers the money --

\* \* \* \*

Q. -- for the batch plant. And that's money under

the -- Mr. Salem's original contract; is that correct? It's

part of the total money?

A. It's part of the one and a half million. (**Exhibit 13**, pp. 22:3-20, 22, 25; 23:1, 4-7, 19-21, 23-25; 24:1)

1. Thus, Yusuf testified that he had taken in and then dispersed funds under the contract in 2011. (**Exhibit 13**)
2. In support of this, Fathi Yusuf also testified in his 2014 deposition that he received proceeds from the Y & S sale of the Dorothea property not more than three years earlier from the date of that April 2, 2014 deposition; totally consistent with the November 16, 2011 transfer of funds for final payment of the Y & S stock by Mr. Salem. (SOF ¶¶ 10, 11)

Q [Mr. Holt]. . . .Dorothia is -- the 1.5 million were -- were

monies paid that belonged to you and -- and Mr. Hamed?

A. [FATHI YUSUF] Yes.

\* \* \* \*

A. One million and a half is absolutely 50/50. I'm

not hiding anything.

Q. . . .And when did you get that money?

A. I get that money, I don't have a date. But I get

that money maybe, I can guarantee you, it's not three years.

It's less than three years. . . . (**Exhibit 4**, pp. 101:17-19; 105:6-12)

1. Just prior to obtaining the Hamed signature to release the stock escrow in 2012, Yusuf showed Waheed “Willie” Hamed and Shawn Hamed a handwritten document that Yusuf prepared. The handwritten document contained the amount owed to Hamed from the sale of the Y & S stock (and by extension, the sale of the Dorothea property) and a loan Hamed paid on behalf of Yusuf. **Yusuf’s handwritten calculations showed the total owed Hamed was $802,966**, and that in exchange for Shawn Hamed’s signature, Yusuf would turn over the $802,966 to Hamed, according to Fathi Yusuf’s January 21, 2019 deposition testimony.

Q. [Mr. Hartmann]. . .And I'm also handing to you a second

document, which is labeled Claim H-1 Exhibit 8, which is a

handwritten document. And I'd ask you if you could look at

both of those documents?

A. [FATHI YUSUF] Yeah, I recognize both of them.

\* \* \* \*

Q. So you think you may have given it [Claim H-1 Exhibit 8] to either Shawn

or --

A. One of the two, because one -- both of them, they

was in St. Thomas.

Q. Okay. Either Shawn or Willie, is that what you're

saying?

A. Yes.

\* \* \* \*

Q. [A]nd why did you give it to them? What were

you --

A. Because they have the right to it. They own

50 percent of the million and a half.

Q. Okay. And -- and what is the eight -0- two nine

six six?

A.. . .but I remember the one -0-

five nine thirty-two. This here was a loan to somebody.

And I asked Mohammad Hamed to pay it. And this is what,

70,000 dinar, Jordanian dinar. I convert it into U.S.

dollar. They came up one -0- five nine thirty-two. And

then I brought the total. The total would be one -- one

million six -0- five nine thirty-two. Half of that is

802,966. (**Exhibit 8** and **Exhibit 13**, pp. 19:10-14; 20:12-18, 20-25; 21:2-9)

1. Fathi Yusuf testified in his January 21, 2019 deposition, that he asked Shawn Hamed to sign the February 2012 release of the Y & S stock in escrow, allowing the remaining shares of Y & S to be released to the buyer, Hakima Salem.

Q. [Mr. Hartmann] Exhibit 7, that one. . . .

\* \* \* \*

Q.. . . .So what I'm asking you is, when you got --

when you were talking to, you think, Willie and Shawn, you

needed Willie or Shawn to do something, right?

A. [FATHI YUSUF] I want them to give the release, because the

people ask for the release. They already paid the money

long time, and **they requested the release, and I told Shawn**

**to sign the release**. (**Exhibits 7 and 13**, pp. 24:16, 23-25; 25:1-4)(Emphasis added.)

1. Directing the signature of the release document in 2012 was an act under the contract by Fathi Yusuf as the Nominee of the parties. (**Exhibit 6**)
2. On February 19, 2012, Shawn Hamed and Nejeh Yusuf signed a Notice of Payment of Purchase Price and Authorization to Release Stock Certificates for the Y & S Corporation. The release authorized the escrow agent holding the stock under the contract to release it to Hakima Salem, the buyer. The Notice stated the following:

Pursuant to that certain agreement of Sale of Stock dated June 15th, 2000 by and between Hisham Hamed and Najah Yusef, as sellers, and Hakima Salem, as buyer, converning [*sic*] the sellers' 1,000 shares of Y & S Corporation, a United States Virgin Islands corporation, the undersigned hereby gives you formal written notice that the purchase price has been paid in full on a timely basis and that you are authorized and directed to release the shares of stock that have been endorsed by the sellers to the buyer. . . . (**Exhibit 7**)

1. Fathi Yusuf then delivered the signed contract/escrow release to Attorney King, who release the Y & S stock to the Buyer pursuant to the contract. This was also an act under the contract. (**Exhibit 6** and **Exhibit 7**)
2. On September 17, 2012, this action was filed because of: (1) Yusuf’s denial of all of Hamed’s partnership rights, (2) Yusuf’s unilateral taking of $2.7 million from the Partnership and (3) Yusuf’s refusal to pay over the $802,966 described here as part of that effort. (**Exhibit 15**)
3. On October 4, 2012, Yusuf removed the action to the Federal District Court. (**Exhibit 16**)
4. The removal was improper. On November 16, 2012, the District Court remanded this action to this Court, stating, at 11, “Defendants have failed to establish that removal to the District Court of this partnership dispute between Virgin Islands residents is proper.” (**Exhibit 17**)
5. Fathi Yusuf testified in his April 2, 2014 deposition that he had received, but **kept,** the $1.5 million in payments for the Dorothea property.

Q. [Mr. Holt]. . . .So now the first line, Dorothia,

1.5 million, those were the funds that you received when the

other partner bought you out or paid you off?

\* \* \* \*

Q. The first line, the 1.5 million on that line?

A. [FATHI YUSUF] Yeah, this is a fund I received -- I received from

Dorothia.

Q. And is that actually technically YNH [*sic*] Investments,

Inc.? Is that --

A. Yes.

Q. Okay. And -- and so those were funds that you

received from them, is that correct?

A. I received for our half, but I kept it. I'm not

stealing it. We're going to account for it. (**Exhibit 4**, p. 100:7-9; 11-20)

1. On July 7, 2014, Mohammad Hamed filed a second complaint against Fathi Yusuf, more particularly alleging that certain property in St. Thomas, known as the Dorothea Property, was jointly owned by them (in the name of two entities known as Y & S and R & F) had been sold and that Yusuf had received the funds, but would reimburse Hamed for his half of the proceeds. (**Exhibit 9**)
2. On March 21, 2016, the parties filed a stipulation to consolidate the Dorothea Property claim with the current case. Counsel for Hamed and Yusuf signed a "stipulation Re: Consolidation" in which they stipulated "to substantively consolidate these cases, since the claims asserted in the more recently filed case, SX-2014-CY-278 the "278 Case" (assigned to Judge Molloy), may be treated as claims for resolution in the liquidation process of the older case, SX-2012-CV-370 [the "370 Case"] (assigned to Judge Brady)." See Stipulation attached as **Exhibit 10**, which was entered as an Order of the Court on October 13, 2016.
3. On September 30, 2016, Yusuf filed his Accounting Claims and Proposed Distribution Plan in the "370" case **which acknowledged this $802,966 debt is owed**:

**V. Y&S and R&F Stock Sale Proceeds Distribution**

The Partnership invested in various entities used to purchase either stock or real estate. **One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeh Yusuf**. The two sons sold their stock for $900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. **Yusuf has received all of the proceeds from the sale of the stock**. Although claims to these funds were the subject of a separate suit (*Hamed v. Yusuf*, Superior Court of St. Croix, SX-2014-CV-278), the parties stipulated to have these claims consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278**, $802,966 should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F**. (Footnoted omitted. Emphasis added.) (**Exhibit 11**, p. 11) (Emphasis added.)

1. Additionally, in Yusuf’s September 30, 2016 Accounting Claims and Proposed Distribution Plan, Yusuf stated that the report’s Exhibit L, an email dated November 16, 2011, was evidence that a “payment was made on behalf of the purchaser of the Y &S and R &F stock and represented a portion of the proceeds of the sale of that stock.” This transaction puts the payments for the Y & S stock (and by extension, the sale of the Dorothea property) squarely within the statute of limitations time period set by Judge Brady on July 21, 2017 in Memorandum Opinion and Order re Limitations on Accounting in *Hamed v Yusuf*, SX-12-CV-370. (**Group Exhibit 14**).
2. On October 30, 2017, Yusuf submitted his amended accounting claims which were limited to transactions occurring on or after September 17, 2006. Yusuf now contends that the proceeds from the sale of the Y & S and R & F stock are barred by Judge Brady’s July 21, 2017 Order re Limitations on Accounting:

As a result of various adjustments. . . $802,966.16 would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. However, since the Accounting Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the Accounting Order. (**Exhibit 12**, pp. 14-15, footnote omitted)

1. Although Yusuf contended in his October 30, 2017 amended accounting claims that the proceeds from the sale of the Y & S and R & F stock were time barred by Judge Brady’s July 21, 2017 Order re Limitations on Accounting, Yusuf states the opposite in another section of his amended accounting claims. Yusuf asserted that the email documenting a $150,000 November 16, 2011 money transfer (Exhibit L) was made by the purchaser of the Y & S and R & F stock and the transfer represented a portion of the purchaser’s payment for the stock. This puts the time frame for the receipt of payment for the Y & S stock directly in the post September 17, 2006 timeframe. (**Group Exhibit 14**)

Because Hamed converted $150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of $150,000.00 to the Bank of Palestine to make good on the original donation. See Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim [dated November 16, 2011].17

[Footnote 17]: This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock.

1. On May 15, 2018, Yusuf admitted in his response to Hamed’s Fourth Request to Admit, *Hamed v Yusuf*, SX-12-CV-370, that a "balance of $802,966.00 due to Hamed" and that acknowledgement was made after September 17, 2006.

**Request to Admit 30 of 50:**

\* \* \*

Admit or Deny that on September 30, 2016, Yusuf's Accounting Claims and Proposed Distribution Plan, p. 3, as filed with the Court, Defendants acknowledged, as follows, in writing: a "balance of $802,966.00 due to Hamed"-and that such acknowledgement was made after September 17, 2006.

b) an accounting of funds received by Yusuf for the sale of Y&S

Corporation ("Y&S") and R&F Condominium, Inc. ("R&F") stock

**resulting in a balance of $802,966.00 due to Hamed** ...

(Emphasis added.)

**Response:**

Admitted that the words quoted above were set forth in Yusuf’s Accounting Claims and Proposed Distribution Plan filed on September 30, 2016 without the emphasis added as to the boldfaced type and that such words were modified in Yusuf’s Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2006 (at p. 4 and 14-15) as a result of the Court's July 21, 2017 Memorandum and Order Re Limitations on Actions. (**Exhibit 18**)

1. On December 18, 2018, Yusuf filed his supplemental responses to Hamed’s discovery requests regarding the Dorothea property. He completely changed his version of events, now stating that the payments for the property occurred prior to 2006, that he had no physical records of the $1.5 million in payments, and that interest was paid directly to a charity as part of the agreement to donate any interest.

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest. (**Exhibit 19**)

1. On January 7, 2019, the Special Master made the following finding of fact in his Order, *Hamed v Yusuf*, SX-12-CV-370:

[T]he Master finds that the following facts are undisputed: (1) Hamed and Yusuf each have 50% interest in the sale proceeds of Estate Dorothea; (2) Yusuf received the entire sale proceeds of Estate Dorothea; and (3) Hamed was never paid for his 50% interest in the sale proceeds.(**Exhibit 20**, pp. 5-6, footnotes omitted)

1. On January 15, 2019 in a supplemental interrogatory response, Yusuf revised his December 18, 2018 response and stated he could not recall for sure whether he received all of the Y & S loan payments prior to 2006.

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.

\* \* \* \*

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. (**Exhibit 21**)

**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:

**Hon. Edgar Ross**

Special Master

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