

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)	
)	
Plaintiff,)	CIVIL NO. SX-12-CV- 370
v.)	
)	
FATHI YUSUF AND UNITED CORPORATION)	ACTION FOR DAMAGES
)	INJUNCTIVE AND
Defendant.)	DECLARATORY RELIEF
)	JURY TRIAL DEMANDED
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**MOTION TO DEEM PLAINTIFF’S PARTIAL SUMMARY JUDGMENT MOTION
CONCEDED AND REPLY TO DEFENDANT’S RULE 56 REQUEST**

The plaintiff moved for partial summary judgment seeking (1) one half of all of the profits generated by the three Plaza Extra supermarkets and (2) and the recognition of their right to participate in the operation the three supermarkets after the defendants made the following judicial admission on page 3 of their memorandum in support of their Rule 12 motion (Excerpt attached as Exhibit 1):

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.)

Consistent with this admission, the defendants then further admitted in their Rule 12 reply memorandum on page 11 as follows (excerpt attached as Exhibit 2):

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store.

Thus, the plaintiff wondered how the defendants could oppose his summary judgment motion in light of these judicial admissions. The defendants sought two extensions of time to file their response. See Group Exhibit 3. Finally, on December 20th the

defendants conceded they could not file a meritorious response, instead trying to delay summary judgment by filing a Rule 56(d) affidavit seeking another extension in order to do discovery, stating on page 3 as follows:

However there is a fundamental dispute between the parties as to whether Mohammed Hamed is a *bona fide* partner or a mere joint venturer who has no partnership rights whatsoever under the Virgin Islands Uniform Partnership Act or any other authority.

However, as noted by the prior holdings in this jurisdiction, there is no distinction between calling something a "partnership" and a "joint venture," as the Virgin Islands follows the "fundamental rule of law" that a joint venture is a subspecies of partnership. *Boudreaux v. Sandstone Group*, 1997 WL 289867, at *6 (V.I. Terr. Ct. 1997).¹

In short, the defendants have admitted that the plaintiff is entitled to 50% of the profits regardless of what name is used. As the plaintiff has already noted, receipt of a share of the profits raises the presumption of a partnership under 26 V.I.C. §22, which the defendants have offered no evidence to rebut, except to argue that a different name applies—joint venture—which is an irrelevant distinction under the law of the Virgin Islands. Thus, summary judgment is warranted as to these issues.

In their Rule 56(d) pleading, the defendants cites the 1946 Supreme Court holding in *Commissioner v. Tower*, 327 U.S. 280, 286-87 (1946), for the proposition that

¹ See also *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md.App. 236, 247, 603 A.2d 1357, 1362 (Md.App. 1992) ("As a partnership, the Joint Venture's conduct is governed by the Maryland UPA"); *Austin v. Truly*, 721 S.W.2d 913, 920 (Tex.App.—Beaumont, 1986) ("It is a fundamental rule of law that a joint venture, such as this one is, is also a general partnership. Being a general partnership, this venture is subject to the Texas UPA"); *Kislak v. Kreedian*, 95 So.2d 510, 514 (Fla. 1957) ("They are both governed by the Florida's Revised UPA"); *Stone-Fox, Inc. v. Vandehey Development Co.*, 290 Or. 779, 785, 626 P.2d 1365, 1368 (Or. 1981) ("This court has consistently held that partnership law controls joint ventures.") and *Barrett v. Jones, Funderburg, Sessums, Peterson & Lee, LLC*, 27 So.3d 363, 372 (Miss. 2009) ("As a joint venture, SKG was governed by Mississippi's partnership law, the [UPA] of 1997.")

the intent to form a partnership is a question of fact, but that holding does not help the defendants for two reasons. First, the 1946 decision of the Supreme Court in is a tax case and under the tax code, the definition of a partnership found in 26 U.S.C. §761 includes a joint venture, stating as follows:

- (a) Partnership—The term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. (Emphasis added).

In short, like the law of the Virgin Islands, federal law makes no distinction between a “partnership” and a “joint venture,” so the “intent” to form one or the other is irrelevant to the issues in this case.

Second, and equally important, the Virgin Islands Legislature has eliminated “intent” as a factor in determining whether a partnership exists, instead looking at the business arrangement between the parties, stating in 26 V.I.C. §22 as follows:

- (a) Except as otherwise provided in subsection (b) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, **whether or not the persons intend to form a partnership.** (Emphasis added).

In short, the Uniform Partnership Law looks to the substance of the transaction, not the “intent” of the partners.

In this case, the plaintiff has already submitted the deposition to Fathi Yusuf that states in detail how he and Mohammad Hamed became co-owners of the Plaza Extra supermarkets, excerpts of which are attached again to this motion as Exhibit 4. Those admissions in Yusuf's deposition clearly establish a partnership, which explains why his counsel cannot in good faith argue otherwise in these proceedings. Indeed, they have made express judicial admissions consistent with the testimony in that deposition.

Thus, the defendants' belated attempt to further delay summary judgment must fail, as it is just a diversionary tactic to try to avoid the entry of summary judgment. Indeed, as the Third Circuit noted in *Doe v. Abington Friends School*, 480 F.3d 252 (3rd Cir. 2007), a case cited by the defendants in their Rule 56(d) pleading:

We have repeatedly noted the need for a party moving under Rule 56(f) to accompany the motion with a supporting affidavit detailing "what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not previously been obtained." *Id.* at 255n.3.

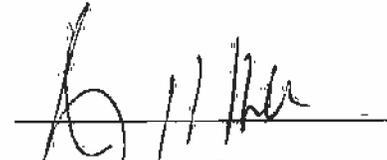
In this case, the affidavit submitted by the defendants is deficient in all three areas.

First, it fails to "detail the information sought," only generally averring to the need to do depositions to explore the parties "intent" as to whether they were forming a partnership or joint venture.² Moreover, as the distinction between a "partnership" and a "joint venture" is irrelevant, as noted, there is nothing "to uncover that would preclude summary judgment". Finally, the defendant failed to explain why it did not try to obtain this information during the time period when it obtained the two prior extensions of time to respond to the summary judgment motion. Of course, the reason is clear—there is nothing further to discover on this issue.

As the Court will recall, the defendants already delayed this matter for three months by trying to remove it from this Court's jurisdiction, which was rejected by the District Court. It is respectfully submitted that in light of the defendants' multiple judicial admissions, this matter is ripe for entry of the plaintiff's partial motion for summary judgment.

² Even if "intent" were relevant to the formation of a partnership, the attached deposition excerpts of Fathi Yusuf (Exhibit 4) confirm that the parties intended to form a partnership to operate the Plaza Extra Supermarkets. In short, there is no genuine issue of fact as to the intent of the parties, despite counsel's "argument" to the contrary that is not supported by any **evidence**.

Dated: December 24, 2012



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
Christiansted, VI 00820

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2012, I served a copy of the foregoing motion by hand on:

Nizar A. DeWood
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

And by email (jdiruzzo@fuerstlaw.com) and mail to:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

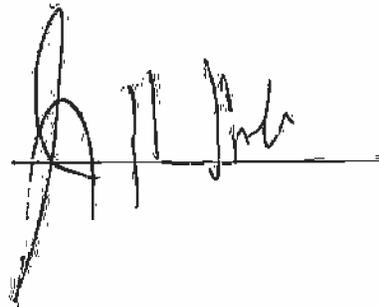


EXHIBIT 1

Hamed v. Yusuf; 1:12-cv-99
Memorandum of Law in Support of Defendants'
RENEWED Motion to Dismiss, Definite Statement, and Strike
Page 3 of 26

represented to the District Court of the Virgin Islands, and the U.S. Attorney's Office that no partnership ever existed between his father Plaintiff Hamed and Defendant Yusuf, but instead only a joint venture agreement granting Plaintiff Hamed fifty percent (50%) of the profits of the operations of the Plaza Extra Supermarkets.

II. FACTS

On January 15th, 1979, Defendant United Corporation ("United") was organized and incorporated in the Virgin Islands. Since 1979, Defendant United has always been wholly owned by Defendant Yusuf and his family in various shares. **Exhibit A: Yusuf Affidavit ¶3.** In 1983, Defendant United completed the construction of a shopping mall on land parcels 4-C & 4-D of Estate Sion Farm; these parcels have always been owned by Defendant United in fee simple absolute, and remain so to this date. The shopping mall was named United Shopping Plaza ("Shopping Plaza"). Further, Defendant United acquired the trademark "Plaza Extra" and has since utilized the trademark name in all of its supermarket operations. **Exhibit A: Yusuf Affidavit ¶ 7.** Since 1986, Defendant United has continually used that trademark and never transferred or otherwise permitted anyone to have any kind of interest in the "Plaza Extra" trademark. **Exhibit A: Yusuf Affidavit ¶ 7.**

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 in exchange for a loan of \$225,000 and \$175,000 cash payment. The loan was repaid in full, and Plaintiff Hamed received 50% of the net profits thereafter. At no point did Plaintiff Hamed ever acquire a

Hamed v. Yusuf; 1:12-cv-99
Memorandum of Law in Support of Defendants'
RENEWED Motion to Dismiss, Definite Statement, and Strike
Page 25 of 26

respond to Plaintiff's Amended Complaint. Further, the Court should strike the exhibits and factual allegations produced by the parties' settlement discussions.

Wherefore, it is respectfully requested that the Court grant this Motion.

Date: November 5, 2012

RESPECTFULLY SUBMITTED,

THE DEWOOD LAW FIRM
Counsel for Defendants Fathi Yusuf
And United Corporation

By: /s/ Nizar A. DeWood _____
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EXHIBIT 2

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED)
) CIVIL NO. SX-12-CV-370
 Plaintiff,)
)
 v.)
) ACTION FOR DAMAGES, et al.
 UNITED CORPORATION)
 FATHI YUSUF) DEFENDANTS' REPLY
) TO PLAINTIFF'S OPPOSITION
) TO DEFENDANTS' RULE 12
 Defendants.) MOTION
)

DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO
DEFENDANTS' RULE 12 MOTION

COME NOW Defendants United Corporation and Fathi Yusuf, through their undersigned counsel and respectfully file this Reply to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss. For the reasons stated below, and reincorporating fully the arguments set out in Defendants' Rule 12 Motion to Dismiss Plaintiff's Amended Complaint, it is respectfully requested that the court grant Defendants' Motion to Dismiss.

I. INTRODUCTION

Plaintiff's Opposition to Defendants' Rule 12 Motion to Dismiss can be reduced to the following three arguments.

1. Because the parties agreed to split the profits "50/50" the court must find a partnership between the parties; that there is no such thing as a contractual "joint venture" and use



Plaintiff fails to allege any facts showing that a "partnership" owns these bank accounts. To date, these accounts remain the property of Defendant United. There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store. This is what Plaintiff Hamed, through his agent, has represented to everyone for the last 26 years, including representations in prior proceedings before the District Court of the Virgin Islands and the U.S. Attorney's Office. The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is. The issue is whether Plaintiff Hamed can come to the court after 26 years and declare a partnership the parties never intended. As such, the Amended Complaint should be dismissed for failure to properly plead the existence of well-defined partnership with accurate allegations of assets and liabilities.

¶17. United has always had completely separate accounting records and separate bank accounts for its operations of the "non-supermarket" shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate "non-supermarket" United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.

Plaintiff concedes there is a separation between the accounts for the operation of the Plaza Extra supermarkets and the "non-supermarket" shopping center. This clearly again points to the fact that Defendant United has an agreement with Plaintiff and not a partnership: Why else would there be specially segregated United Corporation bank accounts that Plaintiff Hamed has no control or interest in if this is a partnership? The Amended Complaint does not properly allege the reason for these separate accounts, which is mainly because the parties have a joint

By:



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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true copy of Defendant's Reply to Plaintiff's Opposition to Defendants' Rule 12 Motion to Dismiss was served on the Plaintiff via his counsel at the below address and date on this 13th day of December, 2012.

Joe Holt, Esq. 2132 Company St. Suite 2 Christiansted VI 00820	CARL J. HARTMANN III Attorney-at-Law 5000 Estate Coakley Bay, L-6 Christiansted, VI 00820
--	--



Nizar A. DeWood, Esq.

EXHIBIT 3

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED, by his
authorized agent, WALEED HAMED,

Plaintiff,

v

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

AGREED MOTION FOR ENLARGEMENT OF TIME

COMES NOW, Defendants Fathi Yusuf and United Corporation (collectively, "Defendants"), pursuant to Super. Ct. R. 7, Local Rule 7.1(e)(1) of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, request that this Court grant Defendants an enlargement of time, *through and including December 14, 2012*, within which to respond to the Plaintiffs' Motion for Partial Summary Judgment. In support of this motion, Defendants state the following:

1. Plaintiffs initiated this action, a commercial dispute, on or about September 17, 2012, the date of the Complaint.
2. On November 12, 2012 the Plaintiffs moved for partial summary judgment.
3. Undersigned counsel communicated via email to counsel for the Plaintiffs requesting an enlargement of time through and including the 14th of December. Attorney Holt consented to the request.
4. Defendants thus respectfully request an enlargement of time, through and including December 14, 2012, within which to prepare and finalize their response in opposition to the motion for partial summary judgment.



5. The enlargement of time is requested simply to afford Defendants' counsel sufficient time prepare for his December 4th oral argument before the Third Circuit (*Cooper, et al. v. Comm'r of the IRS, et al.*) and fashion a response in opposition to the pending motion for partial summary judgment.

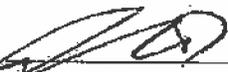
6. The relief requested in this motion is made in good faith and not for any dilatory tactic.

WHEREFORE, Defendants Fathi Yusuf and United Corporation respectfully request that this Court grant an enlargement *through and including December 14, 2012*, within which to file their response in opposition to the Plaintiffs' Motion for Partial Summary Judgment.

A proposed such Order is attached hereto.

Respectfully Submitted,

Dated Nov. 27, 2012

By: 
Joseph A. DiRuzzo, III
USVI Bar #1114
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1001 Brickell Bay Drive, 32nd Floor
Miami, Florida 33131
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jdiruzzo@fuerstlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on Nov. 27, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, holtvi@aol.com.

By: 
Joseph A. DiRuzzo, III

that he would discuss the request with his clients. As of the date and time when this motion was being drafted Attorney Holt had yet to indicate his position on the matter.

6. Defendants thus respectfully request an enlargement of time, through and including December 21, 2012, within which to prepare and finalize their response in opposition to the motion for partial summary judgment.

7. The enlargement of time is requested simply to afford Defendants' counsel sufficient time to catch up from the December 4th oral argument before the Third Circuit (*Cooper, et al. v. Comm'r of the IRS, et al.*) and fashion a response in opposition to the pending motion for partial summary judgment.

8. The relief requested in this motion is made in good faith and not for any dilatory tactic.

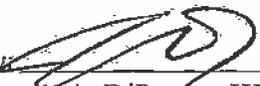
9. The Defendants will not seek an additional extension of time.

WHEREFORE, Defendants Fathi Yusuf and United Corporation respectfully request that this Court grant an enlargement *through and including December 21, 2012*, within which to file their response in opposition to the Plaintiffs' Motion for Partial Summary Judgment.

A proposed such Order is attached hereto.

Respectfully Submitted,

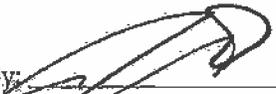
Dated December 12, 2012

By 
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on December 12, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, holtvi@aol.com.

By: 

Joseph A. DiRuzzo, III

EXHIBIT 4

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

AHMAD IDHEILEH,

Plaintiff,

vs.

UNITED CORPORATION and
FATHI YUSUF, Individually,

Defendants.

Case No. 156/1997

THE ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of February 2000, at the Offices of
Caribbean Scribes, 2132 Company St., Ste. 3, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
1:05 p.m. and 4:05 p.m. pursuant to Notice and Federal Rules
of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

Cheryl L. Haase
(340) 773-8161

CO



FATHI YUSUF -- DIRECT

1 A. I personally own 50 percent of Plaza Extra in
2 1986. I own United Shopping Plaza. I'm a member of
3 United Corporation, who owns United Shopping Plaza. I build
4 that store, I was struggling for a loan. The whole island
5 know what I went through. I said I'm going to build this
6 building no matter what, and hold the supermarket for my
7 personal use.

8 It took me three years. I give an offer to
9 two nephew of mine and my brother-in-law, Mr. Hamed, if they
10 would like to join me in building up this store together, and
11 we should not have any problem, if I finish build up the
12 building, we should have no problem whatsoever to go to the
13 bank and the bank will grant us the loan to operate the
14 supermarket. Okay?

15 During construction -- I'm going to go a
16 little bit back to tell you what is my background. During
17 construction, I was struggling for loan. And at that time
18 Banco Popular, I remember, came into the Virgin Islands and
19 took over the majority of interest of First National
20 Citibank. They buy all their customers, and they was very
21 hungry to do business in the island because they have
22 expenses to face so they like to issue loan as fast as
23 possible to cover their expenses.

24 Excuse me. Can I have water please if you
25 don't mind?

Cheryl L. Haase
(340) 773-8161

FATHI YUSUF -- DIRECT

1 So I left Nova Scotia, struggling, left them
2 not to get a loan, but did not close my account. I struggle
3 all over looking to get a loan. I went to all local banks at
4 that time, and everybody says, I'm sorry, we can't help you.
5 So I find it is a golden opportunity for me to go to Banco
6 Popular.

7 So I went to the manager there, I explained to
8 him my story what Scotia did to me and so he say, I will come
9 to the site.

10 When he come to the site where I'm building,
11 he says, How you going to put this building together?
12 Where's your plan? I show it to him. It's almost zero, the
13 specification. Just numbers for me, columns, but the column
14 doesn't say what thick, what wide. It just give me the
15 height.

16 So the bank, he says, Mr. Yusuf, I'm sorry.
17 We don't do business that way. We have to have somebody
18 professional plan with full specification. I could see your
19 plan approved, I could see the steel here, but it's -- you
20 don't have the proper material or record to take to my board
21 of director to approve a loan in the millions.

22 So I understood. My answer to that gentleman
23 was, unfortunate because of my financial situation, I have to
24 choose this route. But I promise you, as a man, I will put
25 that building together. The man told me at that time, I

FATHI YUSUF -- DIRECT

1 he gave me about 275,000, and ~~25~~ 25 percent each,
2 25 percent for my sister son, 25 percent for my brother son,
3 25 percent for me.

4 But before I continue, I'm going to -- I would
5 like to go back a little bit more to clear something. When I
6 was in the financial difficulty, when I was in financial
7 difficulty, my brother-in-law, he knew. I shouldn't -- he
8 start to bring me money. Okay? He own a grocery, Mohammed
9 Hamed, while I was building, and he have some cash. He knew
10 I'm tight.

11 He start to bring me money. Bring me I think
12 5,000, 10,000. I took it. After that I say, Look, we
13 family, we want to stay family. I can't take no money from
14 you because I don't see how I could pay you back. So he
15 insisted, Take the money. If you can afford to, maybe pay
16 me. And if you can't, forget about it. Okay. He kept
17 giving me. I tell him, Under this condition I will take it.
18 I will take it.

19 He kept giving me until \$200,000. Every
20 dollar he make profit, he give it to me. He win the lottery
21 twice, he gave it to me. All right? That time the man have
22 a little grocery, they call Estate Carlton Grocery. Very
23 small, less than 1,000 square foot, but he was a very hard
24 worker with his children. And it was, you know, just like a
25 convenience mom-and-pop stores. He was covering expenses and

Cheryl L. Haase

FATHI YUSUF -- DIRECT

1 saving money.

2 I say, Brother-in-law, you want to be a
3 partner too? He said, Why not? You know, as a family, we
4 sit down. Says, How much more can you raise? Say, I could
5 raise 200,000 more. I said, Okay. Sell your grocery. I'll
6 take the two hundred, four hundred. You will become
7 25 percent partner.

8 So we end up I'm 25 percent, my two nephew 25
9 each, and my brother-in-law, Mohammed Hamed, 25 percent. I
10 don't recall the year, could be '83 or '84, but at least
11 thanks God in the year that Sunshine Supermarket opened,
12 because his supermarket is the one who carries these two
13 young men and my brother to go into the supermarket with me.
14 So I have their money, I finish the building.

15 We call the refrigeration manufacturer, not to
16 waste time. We book an order for our refrigeration, and we
17 committed to it. And from their money I have paid \$100,000
18 deposit on the equipment. I was so sure the gentleman at
19 Banco Popular, he promised me, you know. Everything were
20 look to go me encouraging. And especially at that time I'm
21 sure anybody in St. Croix in the past twenty, thirty years,
22 he knew that that building will never go up. Only maybe six
23 people in St. Croix at that time says I might be able to put
24 it up. But 99.9 of St. Croix resident, they were looking at
25 me as a fool.

Cheryl L. Haase

1 man and he look at me, he underestimate. It came to an
2 extent, I tell him, look, sir. I respect your profession.
3 You're the bank manager. I respect that. And I want you to
4 respect my profession. I'm a retailer. Everybody have a way
5 of making a living. Oh, I been denied.

6 Then, but when I been denied, I have to tell
7 my partner what's going on. I been entrusted to handle the
8 job perfect, and I am obligated to report to my partner to
9 anything that happened. I told my nephews and I told my
10 partner, Hey, I can't get a loan, but I'm not giving up.

11 So two, three days later my two nephews split,
12 say, We don't want to be with you no more, and we want our
13 money. I say I don't have no money to pay you. The money's
14 there, but if you want to leave because I default, you free
15 to leave.

16 How we going to get paid?

17 I says, Shopping center is 50 percent owned by
18 you uncle and 50 percent by me. I have to feed my children
19 first, and whatever left over, I'll be more than happy to
20 give it to you. Okay. What do you want us -- what do you
21 want to pay us for rent of our money?

22 We come to an agreement, I pay them 12 percent
23 on their money, and 150,000 default because I don't fulfill
24 my commitment. I accepted that. We wait until my partner,
25 which is my brother, came. He's an older man. And we came

1 up to Mr. Mohammed Hamed, I say, You want to follow them? He
2 say, Yeah, I will follow them, but do you have any money to
3 give? I say, Look, Mr. Hamed, you know I don't have no
4 money. It's in the building, and I put down payment in the
5 refrigeration. But if you want to follow them, if you don't
6 feel I'm doing the best I can, if you want to follow them,
7 you're free to follow them. I'll pay you the same penalty,
8 75,000. I will give you 12 percent on your 400,000.

9 He says, Hey. If you don't have no money,
10 it's no use for me to split. I'm going to stay with you.
11 All right. I say, Okay. You want to stay with me, fine. I
12 am with you, I am willing to mortgage whatever the
13 corporation own. Corporation owned by me and my wife at that
14 time.

15 Q. Uh-huh.

16 A. And my partner only put in \$400,000. That's all
17 he put in, and he will own the supermarket. I have no
18 problem. I told my partner, Look, I'll take you under one
19 condition. We will work on this, and I'm obligated to be
20 your partner as long as you want me to be your partner until
21 we lose \$800,000. If I lose 400,000 to match your 400,000, I
22 have all the right to tell you, Hey, we split, and I don't
23 owe you nothing.

24 They say, Mr. Yusuf, we knows each other. I
25 trust you. I keep going. Okay. Now, I told him about the

FATHI YUSUF -- DIRECT

1 two partner left, Mr. Hamed. You know, these two guys, they
2 left, my two nephew, they was your partner and my partner. I
3 give you a choice. If you pay penalty with me and pay the
4 interest with me, whatever they left is for me and you. But
5 if I must pay them the one-fifty penalty and pay them
6 12 percent, then Plaza Extra Supermarket will stay
7 three-quarter for Yusuf and only one-quarter for you.

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

11 Q. Not to cut you short, Mr. Yusuf, but we have to
12 play with time, and I appreciate the history as far as
13 Plaza Extra St. Croix and United Corporation, but I want to
14 focus primarily right now on your relationship with
15 Mr. Idheileh.

16 There came a time that the two of you entered
17 into talks about Plaza Extra on St. Thomas?

18 A. May I interrupt you, sir? I cannot build a roof
19 before a foundation. The problem is you ask me who I am,
20 where I come from. I am explaining myself. I want to show
21 to you and the court that Mohammed Hamed is way before
22 Plaza Extra was opened with me, he was my partner. And
23 Mr. Idheileh, he himself knows, because the money he lend me
24 when I open up Plaza Extra, he was getting paid from Wally.

25 I'm a person, if I run a business, I want to

FATHI YUSUF -- DIRECT

1 stay clean. You know what I mean, clean? I'm the final
2 decision man. I don't give that to anybody. Excuse me. But
3 when it come to money, I don't touch.

4 When I open up Plaza Extra Supermarket, who
5 was in charge of the money at that time is Wally Hamed. When
6 this gentleman, Mr. Idheileh, lend me his money as a friend,
7 I have never signed for him. Who paid him? I never pay him
8 back. My partner's son is the one who pay him back. And he
9 knew, because he come to my office once or twice a week. And
10 he's not the only one knew. Every single Arab in the Virgin
11 Islands knew that Mr. Mohammed Hamed is my partner, way
12 before Plaza Extra was opened.

13 Now, should I ask him or continue?

14 MS. VAZZANA: He's ready to give you a next
15 question.

16 Q. (Mr. Adams) My question to you, sir, is there
17 came a point in time that you and Idheileh started to, or
18 started to have some discussions about Plaza Extra on
19 St. Thomas, is that correct?

20 A. Repeat the question please.

21 Q. There came a point in time that you and
22 plaintiff, Mr. Idheileh, entered into negotiation about a
23 partnership, entering into a partnership with Plaza Extra on
24 St. Thomas, is that correct?

25 A. I can answer that if I could explain it.

1 MR. ADAMS: Let the record indicate I'm
2 showing Mr. Yusuf a copy of the Joint Venture Agreement.

3 A. I sees Mr. Idheileh and myself and Notary Public,
4 and I believe it's a witness underneath. I don't know.

5 Q. (Mr. Adams) Now --

6 A. Notary Public someplace else, and the same
7 witness, and my signature repeated again on a different page.
8 My son. Yeah, my son is the president of United Corporation.

9 Q. Now, sir, the Joint Venture Agreement is between
10 whom?

11 A. Between -- if you have to look at it this way, --

12 Q. No, no, I'm looking --

13 A. -- between me, my partner and him.

14 Q. No, Mr. Yusuf. Let us look at the Joint Venture
15 Agreement that was signed.

16 A. Yeah, I seen it. United Corporation.

17 Q. Thank you.

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

Cheryl L. Haase

1 But due to my honesty --

2 Q. Now --

3 A. Excuse me. I want to clear who I am.

4 -- my partner, he have never have it in
5 writing from me.

6 Q. Mr. Yusuf --

7 MS. VAZZANA: Okay. The question was the
8 question was simple: Who it says the Joint Venture Agreement
9 is between.

10 THE WITNESS: Actually, between
11 United Corporation and Mr. Ahmad Idheileh.

12 Q. (Mr. Adams) Is there anywhere in that Joint
13 Venture Agreement does the name Mr. Mohammed Hamed --

14 MS. VAZZANA: Hamed.

15 Q. -- appear anywhere in that joint venture?

16 A. "No."

17 Q. Is United Corporation the owner of Plaza Extra
18 St. Croix?

19 A. Yes.

20 Q. Is Mr. Hamed an officer of United Corporation?

21 A. Who?

22 Q. Mohammed Hamed.

23 A. No, he's not an officer.

24 Q. He's not an officer of United Corporation?

25 A. No.

Cheryl L. Haase

1 convince my partner's son, Look, we got \$6 million in this
2 store. This man, we come to an agreement --

3 Q. We're talking about Sea-Mart.

4 A. Okay.

5 Q. So in Sea-Mart, when you negotiated that
6 transaction that Mr. Idheileh would be able to be out of
7 Sea-Mart, --

8 A. Yes.

9 Q. -- was that based upon the books or just on a
10 hand shake?

11 A. There was no book whatsoever. Based on their
12 conversation.

13 Q. Okay. Okay. You were asked by Attorney Adams,
14 when it says United Corporation in this Joint Venture
15 Agreement, in talking about Plaza Extra, talking about the
16 supermarket on St. Thomas, who owned or who was partners in
17 United Corporation Plaza Extra at the time before you entered
18 into that Joint Venture Agreement?

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

20 Q. Okay. So when it says United Corporation --

21 A. It's really meant me and Mr. Mohammed Hamed.

22 Q. Okay.

23 A. Mr. Idheileh is well aware of that.

24 Q. Okay. Well, we're talking now Plaza Extra
25 St. Thomas. Who was responsible for hiring employees?