

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

YUSUF YUSUF, FATHI YUSUF, FAWZIA YUSUF,)
NEJEH YUSUF, and ZAYED YUSUF, in their)
individual capacities and derivatively on behalf of)
PLESSEN ENTERPRISES, INC.,)

Plaintiffs,)

vs.)

MOHAMMAD HAMED, WALEED HAMED,)
WAHEED HAMED, MUFEED HAMED,)
HISHAM HAMED, FIVE-H HOLDINGS, INC., and)
KAC357, INC.,)

Defendants,)

-and-)

PLESSEN ENTERPRISES, INC.,)

Nominal Defendant.)

CASE NO. SX-13-CV-120

ACTION FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

**PLAINTIFFS' OPPOSITION TO
SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT
(AS TO COUNTS IV, VI AND VII OF PLAINTIFFS' FIRST AMENDED COMPLAINT)**

Plaintiffs Yusuf Yusuf ("Yusuf"), Fathi Yusuf ("Fathi"), Fawzia Yusuf ("Fawzia"), Maher Yusuf ("Maher"), NejeH Yusuf ("NejeH"), and Zayed Yusuf ("Zayad")(collectively, the "Yusufs" or "Plaintiffs"), through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Opposition to Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed and Five-H Holdings, Inc.'s (collectively the "Hamed Defendants") Second Motion for Partial Summary Judgment as to Counts IV, VI and VII of Plaintiffs' First Amended Complaint as follows:

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

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I. SUMMARY

In 2013, the Hamed Defendants took \$460,000.00 from Plessen without permission, depositing the funds into a personal account. After being caught and sued, they then placed half of the funds with the registry of the Court. However, the funds were still beyond Plessen's reach. They then used the remaining \$230,000.00 to fund their own business venture, fought the lawsuit, and continued to deprive Plessen from use of its own funds. Over two years later, after having benefitted from the use of these funds, they then placed the remaining funds with the Court - still beyond Plessen's control. The Hamed Defendants then continued to fight the lawsuit defending the propriety of their actions. Within the last month, nearly four years after the funds had been improperly taken, they were returned to Plessen by agreement of the parties. The Hamed Defendants attempt to use this fact to argue that the Plaintiffs are no longer entitled to any equitable damages and thus, summary judgment is proper as to three claims that sound in equity. The Hamed Defendants are incorrect. The belated disgorgement of funds improperly taken, after having been caught and after depriving Plessen of the funds for four years causing Plaintiffs to incur expenses to recover the funds, neither excuses their actions, eliminates Plaintiffs' claims for unjust enrichment nor provides a full recovery to Plaintiffs. If it did, such an outcome would reward the improper taking. To the contrary, the return of the funds is simply a partial recovery and constitutes undisputed evidence that the funds were improperly removed in the first instance and should have been returned. The Plaintiffs are still entitled to the equitable relief they have sought and there is no legal or factual basis upon which to grant summary judgment against Plaintiffs as to their equitable claims.

II. Additional Material Facts Which Preclude Summary Judgment

The Hamed Defendants fail to set forth a separate statement of undisputed material facts, instead contending that only three facts are relevant; i.e., 1) that the Hamed Defendants ultimately placed the \$460,000.00, which they improperly removed from Plessen, into the registry of the Court, 2) that the parties agreed for those funds to be returned to Plessen, and, 3) that an Order has been entered based upon the parties' stipulation to return the funds.

These facts are incomplete and do not provide a basis upon which to grant partial summary judgment. Additional, undisputed material facts give rise to and further support Plaintiffs' continued claims against the Hamed Defendants for unjust enrichment (Count IV) and for an accounting (Count VI), thus, precluding summary judgment as to these Counts. Furthermore, Plaintiff's claims for injunctive relief in Count VII are not impacted by the eventual recovery of the improperly taken funds and, therefore, summary judgment as to Count VII is not warranted.

It is undisputed that Waleed Hamed removed \$460,000.00 from the Plessen account by check signed by himself and Mufeed Hamed on March 27, 2013. (First Amended Complaint ("FAC"))¶28; Hamed Defendants' Answer to FAC ("Ans.") ¶15). Likewise, there is no dispute that all of these funds were deposited into Waleed Hamed's personal account. *Id.* The Plaintiffs were unaware that the funds were removed, had not provided permission for the removal and upon learning the funds had been taken, undertook to investigate the removal of the \$460,000.00 directly with Scotia Bank. (Yusuf Responses to Interrogatory No. 7, dated Dec. 19, 2016, attached as **Exhibit A** hereto). The Plessen Bylaws provide at Article V, Section 5.1(C) that "If the Board of Directors fails to designate the persons by whom checks...may be signed...all checks...for the payment of money shall be signed by the

President or a Vice President and countersigned by the Secretary or Treasurer...” (FAC ¶12; Ans. ¶7, and Exhibit B to the FAC, attached hereto as **Exhibit B**). The check removing the \$460,000.00 was signed by Waleed Hamed and Mufeed Hamed and was endorsed by Waleed Hamed and deposited into his personal account. (FAC ¶28; Ans. ¶15). At all relevant times, Fathi Yusuf was the Secretary and Treasurer of Plessen. (FAC ¶13; Ans. ¶7). It is undisputed that Fathi Yusuf did not sign or endorse check no. 0376, Exhibit E to the FAC.¹

The Hamed Defendants did not immediately replace the funds that were improperly taken, nor did they do so of their own volition. It was not until after the Hamed Defendants had been caught, were using the money as seed money for one of their own business ventures and then were sued, that they sought to place half of the funds with the registry of the Court. On April 16, 2013, the Hamed Defendants placed only \$230,000.00 of the \$460,000.00 into the registry of the Court. (FAC ¶29; Ans. ¶16). Specifically, the Hamed Defendants admitted that on April 16, 2013 that they “did deposit the Yusuf ½ Share into the Court registry.” (Ans. ¶16).

Placing half of the improperly taken funds in the registry of the Court did not eliminate or lessen the damages that resulted from the taking. Rather, Plessen as well as the Plaintiffs were still deprived of the use of the funds. Whether half or all of the funds were in the registry of the Court, they were not available to Plessen (or the Plaintiffs) and, therefore,

¹ Plaintiffs contend that there was a requirement for the checks to have two signatures, one Hamed and one Yusuf. While Plaintiffs maintain that the Scotia Bank records reflect this requirement, the Hamed Defendants now appear to be disputing this fact. Regardless, the Bylaws require that checks are to be signed by the President or Vice President, who, since the inception of the company, have always been a member of the Hamed family and countersigned by the Secretary or Treasurer. From the inception of the company, Fathi Yusuf has always been the Secretary and Treasurer. Hence, the Bylaws created the requirement of two signatures, with one Hamed and one Yusuf. The \$460,000.00 that was removed had two signatures of two Hameds, Waleed Hamed and Mufeed Hamed, in violation of the requirements of the Bylaws.

Plessen (and the Plaintiffs) continued to incur damages as a result of the improper taking. At best, it only provided some security that possibly half of the improperly taken funds may eventually be recovered, it did not lessen or eliminate the damages which continued to accrue. If anything, placing half of the funds into the registry of the Court constitutes an admission by the Hamed Defendants that the funds were improperly removed and that the Hamed Defendants were not entitled to the funds.

It is undisputed that the Hamed Defendants continued to use the remaining \$230,000.00 for an additional two years. Again, Plessen (and the Plaintiffs) continued to be deprived of the use of all of the funds that were improperly taken and continued to incur expenses and fees in recovering the funds. It was not until April 1, 2015, that the Hamed Defendants paid the remaining \$230,000.00 into the registry of the Court. (Notice of Depositing Funds In Escrow with the Clerk of the Court, April 1, 2015). Again, placing these funds in the registry still deprived Plessen (and the Plaintiffs) of the use of the funds and damages continued to accrue. The Hamed Defendants continued to argue that the removal was not improper and required Plaintiffs to continue their legal efforts to have the funds properly refunded to Plessen. Furthermore, by using the funds for over two years, the Hamed Defendants were unjustly enriched, receiving, in essence, an interest free loan on monies they had improperly taken. During this time, the Hamed Defendants deprived the rightful owner of the funds and forced costs and expenses to be incurred to recover the funds. Lastly, the funds were not returned to Plessen until January 3, 2017, almost four years after they were first taken. (Stipulation and Order for Release of Funds Held in Court's Registry, Jan. 3, 2017).

III. Argument

The Hamed Defendants seek partial summary judgment through a cursory motion contending that because the funds now have been returned to Plessen, nearly four years after having been improperly removed, that they are exonerated from three causes of action; Count IV for Unjust Enrichment, Count VI for and Accounting and Count VII for Injunctive Relief.

A. Unjust Enrichment

The Hamed Defendants argue that because the \$460,000.00 now has been returned to Plessen, years after it was improperly taken that “100% of whatever damages Plaintiff could ever seek (to the extent such damages may be proven) are available at law...”. *See*, Defendants’ Brief, p. 3. Without further elaboration or explanation, the Hamed Defendants conclude that the equitable relief sought in Counts IV for Unjust Enrichment, Count VI for an Accounting and Count VII for Injunctive Relief cannot be had and, thus, partial summary judgment should be granted as to these counts.

The Hamed Defendants’ logic is flawed. Disgorgement of the improperly taken funds years after the taking occurred, after having deprived Plessen (and the Plaintiffs) of the use of the funds but yet enjoying personal and business gains from the funds and causing costs and expenses to be incurred to recover the funds, does not eliminate the claims for unjust enrichment or provide a full recovery to Plaintiffs. It is hornbook law that a misappropriation of money is not excused by the making of restitution of the stolen funds, especially if restitution is made after discovery of the theft. *See, e.g., State of Washington v. Kastner*, 2001 WL 1077839, at *3 (Wash.App. Div. 2, 2001)(affirming trial court’s rulings that a dishonest employee’s repayment of part of the amount she misappropriated, after learning that she was

being investigated, “does not alter the amount of the theft,” and that “restitution is not a defense to a theft”). This rule has special application where, as here, the perpetrator has a fiduciary relationship with the victim of his or her misappropriation. A fiduciary who steals from the person to whom he owed his duty is not excused from the breach and its legal consequences by making restitution to the victim, even in situations involving the theft of far less money than \$460,000. In *Kentucky Bar Association v. Tucker*, 535 S.W.2d 97 (Ky. App. 1975), a lawyer settled a personal injury claim for a client, paid the client \$42,000 rather than the \$42,550 owed, and converted the \$550 difference. The Supreme Court of Kentucky rejected the lawyer’s argument that the fact that he made restitution of the \$550, after an ethics complaint was filed, changed the character of the misappropriation and warranted a penalty less than disbarment:

The fact that restitution was made does not alter the initial dishonesty in misappropriating his client’s funds. With respect to a client’s funds in the hands of an attorney, he is the trustee of an express trust, and converting these funds to his own use is such reprehensible conduct as to make him unworthy of public confidence and unfit to discharge in a proper manner his obligations as an officer of a court.

Id. at 98.

As a director of Plessen, it is axiomatic that Waleed Hamed owes a fiduciary duty to the corporation and to the Yusuf family shareholders. *See, e.g., In the Matter of Reading Company*, 711 F.2d 509, 517 (3d Cir. 1983) (“corporate directors stand in a fiduciary relationship to their corporation and its stockholders”). Waleed’s attempt to make partial restitution, after discovery of his theft, does not alter the reprehensible nature of his acts and the egregious breach of trust they represent. Rather, the return of the funds is merely a partial recovery and constitutes

undisputed evidence that the funds were improperly removed in the first instance and should have been returned. Hence, summary judgment is not proper.

The Virgin Islands Supreme Court has recently defined the elements of an unjust enrichment claim in *Walters v. Walters*, 60 V.I. 768, (V.I., 2014). In an unjust enrichment cause of action, the plaintiff is required to prove:

- (1) that the defendant was enriched,
- (2) that the enrichment was at the expense of the plaintiff,
- (3) that the defendant knew or had an appreciation of the benefit he was receiving, and
- (4) that the circumstances were such that in equity or good conscience the defendant should return to the plaintiff that which he took.

Id. at 779–80, 2014 WL 1681319, at *5. Earlier holdings articulating Virgin Islands law were consistent, explaining that that under Virgin Islands law “[t]he elements for unjust enrichment are that the defendant was enriched, that such enrichment was at the plaintiff’s expense and that the circumstances were such that in equity and good conscience the defendant should return the money or property to the plaintiff.”² *Cruse v. Callwood*, 55 V.I. 999, 1009, 2010 WL 438173, at *6 (D. Virgin Islands, 2010), citing *Gov’t Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 955 F. Supp. 441, 460 (D.Vi.1997). Furthermore, “[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.” *Cruse* at *6, citing Restatement (First) of Restitution § 1 (1936).

“Ordinarily, under unjust enrichment, the measure of restitution is the amount of enrichment received.” *Delta Elec. v. Biggs*, 63 V.I. 876, 884, 2011 WL 4463211, at *4 (D.

² In the new iteration, the third element requiring the defendant to know or appreciate the benefit it received was added.

Virgin Islands, 2011). Damages for an unjust enrichment claim can come in various forms; i.e. compensatory damages, restitution damages and punitive damages. *Measurement of Restitution: Coordinating Restitution with Compensatory Damages and Punitive Damages*, Doug Rendleman, 68 WASH. & LEE L. REV. 973 (2011).

The principal distinction between compensatory damages and restitution is that compensatory damages respond to the plaintiff's loss, restitution to the defendant's gain. Although both deter, if restitution exceeds compensatory damages, restitution will deter more...The Court awards a plaintiff restitution to deter and to prevent or reverse the defendant's unjust enrichments.

Id. at 980.

It should of course go without saying that a plaintiff's restitution, which the court will base on the defendant's unjust enrichment, does not stem from plaintiff's loss, but from the defendant's gains, an amount that will often exceed the plaintiff's loss. The court awards a plaintiff restitution to deter and to prevent or reverse the defendant's unjust enrichment.

Id. at 977. Therefore, restitution looks to the gain enjoyed by the defendant, rather than the loss suffered by the plaintiff, even if the gain is greater than the taking. Hence, a return of the funds taken is a start, but it is, by no means, the full measure of the damages to which Plaintiffs are entitled in an unjust enrichment claim.

i. All Elements of the Claim of Unjust Enrichment are Present

Here, it is Plaintiff, rather than the Hamed Defendants, who may be entitled to summary judgment based upon the undisputed facts. As to the first element, it is undisputed that the Hamed Defendants were enriched by the improper taking of the \$460,000.00 from Plessen and used the funds for their personal benefit and had access to, at least, half of the funds for over two years. The second element is present because the enrichment of the Hamed Defendants came at the expense of Plessen. The Hamed Defendants continued to use \$230,000.00 for over two

years, enriching themselves with these funds and depriving Plessen of them. Likewise, the third element is present because the Hamed Defendants knew or had an appreciation for the fact that they were benefiting from the use of these funds by depositing the funds into Waleed Hamed's personal checking account and then using the monies for their own personal business interests for a period of two years. Therefore, the Hamed Defendants had an appreciation and knowledge of the benefit that the funds provided to them. Furthermore, the payment of "Yusuf's ½ Share into the Court registry" as admitted by the Hamed Defendants, demonstrates that when the funds were taken by Waleed Hamed, that he was not entitled to *all* of the funds, as he readily acknowledged that at least *half* should have been returned to the Plaintiffs. The admission is significant as it demonstrates that when the funds were taken from Plessen, Waleed Hamed did not have an entitlement to them. As to the final element, that circumstances and good conscious dictate that the funds should be returned is also present. The Hamed Defendants, in essence, admitted that the funds were improperly removed and should be returned by placing the funds in the registry of the Court. The fact that the funds have actually been returned, satisfies this fourth element of the claim. However, it does not exonerate the actions of the Hamed Defendants, nor does it limit the recovery of the damages to which Plessen and the Plaintiffs are entitled to claim, nor does it mean that the full measure of the damages have been recovered.

Under any of the available measure of damages, Plaintiffs have not fully recovered simply because the original amount taken was returned almost four years later. From a compensatory damages standpoint, additional losses include the fees and costs incurred in recovering the funds taken, the loss of the use of the funds for the period of time that Plaintiffs were deprived of them, and the time value of money measured in pre-judgment interest. Recovery of the funds taken is a partial recovery of the loss but, it is by no means, the full

recovery of the compensatory damages incurred. Hence, recovery of the initial funds does not merit summary judgment in this case as damages for the unjust enrichment claim remain to be recovered.

From the standpoint of restitution, the gains enjoyed by the Hamed Defendants from their use of the \$460,000.00 and, in particular, their extended use of the \$230,000.00 are damages to which Plaintiffs are entitled. These damages would include profits the Hamed Defendants realized from any business ventures, real estate holdings or any other gains derived from their use of and access to the improperly taken funds. Likewise, a full accounting as to the use of the funds and what gains have been incurred as a result is required. Hence, these damages have not been recovered and thus, the claim for unjust enrichment has not been fully adjudicated.

Lastly, Plaintiffs also claimed punitive damages as result of the wrongdoing of the Hamed Defendants as to their improper taking. (FAC, p. 19, ¶D). The Hamed Defendants' return of the funds does not excuse their actions or alter the amount of the funds taken. If anything, it constitutes an admission by the Hamed Defendants that the funds were improperly taken. Hence, Plaintiffs are entitled to punitive damages under this cause of action. An award of punitive damages and recovery of same remain outstanding. Therefore, while certain damages have been recovered, not all of the damages have been received and the claim for unjust enrichment has not been fully adjudicated. Thus, the Hamed Defendants' summary judgment motion must be denied.

B. Accounting

Regarding the claims for an accounting, because the Hamed Defendants used funds taken from Plessen for their own benefit, Plaintiffs are entitled to a full accounting as to all funds taken as well as all gains enjoyed by the Hamed Defendants from their use of the funds.

An accounting is required to ascertain the Hamed Defendants' gains and benefits derived from these funds from the time the funds were taken to the time they were returned to Plessen. The claims for an accounting are still proper and have not been fully adjudicated simply because the initial funds improperly taken have now been returned. Hence, there is no basis for summary judgment as to this claim.

C. Injunctive Relief

Plaintiffs' claims for injunctive relief relate to a request for a removal of Waleed Hamed pursuant to V.I. Ann. Tit 13, § 341(4) from any office effective as to the date of the taking of the funds on March 27, 2013, nullifying any subsequent actions taken on his part. Furthermore, the claim seeks to restrain the Hameds from alienating any of Plessen's property under V.I. Ann. Tit 13, § 341(6). The claim also seeks to enjoin Waleed Hamed from exercising his official duties at Plessen pursuant to V.I. Code Ann. tit. 13, §341 (3). Hence, the fact that the improperly removed funds were ultimately returned to Plessen does not impact the claims for injunctive relief and summary judgment as to this claim is not warranted.

IV. CONCLUSION

While the Hamed Defendants fail to clearly articulate the basis for their motion, they appear to argue that since the improperly taken funds were returned, no additional damages are available. This is incorrect for the reasons set forth above. Returning funds that should not have been taken, after being caught, does not alter the wrong doing or exonerate the behavior. Furthermore, various damages remain and are readily quantifiable despite the belated return of the funds. An accounting still is required to ascertain the benefits that the

Hamed Defendants received. Further, the recent return of the funds has no impact upon the claims for injunctive relief. Consequently, the Hamed Defendant's motion must be summarily denied.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: February ^{2nd}, 2017

By:



CHARLOTTE K. PERRELL

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CERTIFICATE OF SERVICE

It is hereby certified that on this 2nd day of February, 2017, I caused a true and exact copy of the foregoing **PLAINTIFFS' OPPOSITION TO SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT (AS TO COUNTS IV, VI AND VII OF PLAINTIFF'S FIRST AMENDED COMPLAINT)** to be served upon the following via e-mail:

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EXHIBIT A

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

YUSUF YUSUF, FATHI YUSUF, FAWZIA YUSUF,)
NEJEH YUSUF, and ZAYED YUSUF, in their)
individual capacities and derivatively on behalf of)
PLESSEN ENTERPRISES, INC.,)

Plaintiffs,)

vs.)

MOHAMMAD HAMED, WALEED HAMED,)
WAHEED HAMED, MUFEEED HAMED,)
HISHAM HAMED, FIVE-H HOLDINGS, INC., and)
KAC357, INC.,)

Defendants,)

-and-)

PLESSEN ENTERPRISES, INC.,)
Nominal Defendant.)

CASE NO. SX-13-CV-120

ACTION FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

**PLAINTIFF YUSUF YUSUF'S RESPONSES TO
MUFEEED HAMED'S FIRST INTERROGATORIES**

Plaintiff, Yusuf Yusuf, through his attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provides his Responses to Defendant Mufeed Hamed's First Set of Interrogatories:

GENERAL OBJECTIONS

Yusuf Yusuf makes the following general objections to the Interrogatories. These general objections apply to all or so many of the Interrogatories that, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Interrogatory. The

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assertion of the same, similar, or additional objections in the individual responses to the Interrogatories, or the failure to assert any additional objections to a discovery request does not waive any of Yusuf Yusuf's objections as set forth below:

(1) Yusuf Yusuf objects to the Interrogatories to the extent they may impose obligations different from or in addition to those required under the Federal Rules of Civil Procedure.

(2) Yusuf Yusuf objects to each interrogatory that uses the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Yusuf Yusuf objects to the Interrogatories to the extent they seek information which is protected by the attorney-client privilege or work-product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of Yusuf Yusuf or relating to mental impressions, conclusions, opinions, or legal theories of its attorneys or representatives, or any other applicable privilege or doctrine under federal or state statutory, constitutional or common law. Yusuf Yusuf's answers shall not include any information protected by such privileges or doctrine, and documents or information inadvertently produced which includes such privileged information shall not be deemed a waiver by Yusuf Yusuf of such privilege or doctrine.

(4) Yusuf Yusuf objects to the Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence.

(5) Yusuf Yusuf objects to the Interrogatories to the extent that they use terms or phrases that are vague, ambiguous, or undefined. Yusuf Yusuf's response to each such request will be based upon its understanding of the request.

(6) Yusuf Yusuf objects to the Interrogatories to the extent they seek documents or information not in the possession, custody or control of Yusuf Yusuf, on the ground that it would subject him to undue burden, oppression and expense, and impose obligations not required by the Federal Rules of Civil Procedure.

(7) Yusuf Yusuf has not completed either its discovery or its preparation for trial of this matter. Accordingly, Yusuf Yusuf's responses to the Interrogatories are made without prejudice to Yusuf Yusuf's right to make any use of, or proffer at any hearing or at trial, and are based only upon information presently available. If and as additional, non-privileged, responsive documents are discovered, these Interrogatories will be supplemented to the extent that supplementation may be required by the Federal Rules of Civil Procedure.

(8) Yusuf Yusuf objects to the Interrogatories to the extent that when all of the subparts are included they are in excess of the number permitted by Rule 33.

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INTERROGATORIES AND RESPONSES

INTERROGATORY NO. 1

Please Identify all Scotiabank personnel that any Yusuf Family Member or any Yusuf attorney from 2013 to the present had contact with in connection with *People v Mufeed Hamed*, SX-15-CR-352 and/or *People v Waleed Hamed*, SX-15-CR-353.

RESPONSE:

Subject to the above stated objections, Plaintiff shows that there were no particular employees from Scotiabank that any Yusuf Family Member or Yusuf Attorney had contact with relating to the two cases referenced. Rather, Yusuf Yusuf requested information from whomever happened to be present at the bank when he inquired.

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INTERROGATORY NO. 2

Please Identify any and all Scotiabank personnel that any Yusuf Family Member or Yusuf attorney from 2013 to the present had contact with regarding the March 27, 2013 withdrawal of \$460,000, check number 0376, from Plessen's Account.

RESPONSE:

Subject to the above stated objections, Plaintiff shows that there were no particular employees from Scotiabank that any Yusuf Family Member or Yusuf Attorney had contact with relating to the two cases referenced. Rather, Yusuf Yusuf requested information from whomever happened to be present at the bank when he inquired.

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INTERROGATORY NO. 3

Please Identify the source of the document marked **Exhibit 1**, how it came into the possession of any Yusuf Family Member or Yusuf attorney, when it came into possession of any Yusuf Family Member or Yusuf attorney and the identity of who provided it to the Government of the Virgin Islands.

RESPONSE:

It is Yusuf Yusuf's recollection that he obtained a physical copy directly from Scotiabank after the discovery of the check for \$460,000.00 in an effort to investigate the matter. It is also possible that Sergeant Mark A. Corneiro received a copy of it directly from Scotiabank during his investigation as well. It is Mike Yusuf's recollection that Attorney DeWood was present when the information was provided to Sergeant Mark A. Corneiro.

Upon further inquiry, it is believed that the document was also later secured from Scotiabank pursuant to a subpoena issued in the *Hamed v Yusuf*, SX-12-CV-370 (the "370 Case").

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INTERROGATORY NO. 4

Please Identify the source of the document marked **Exhibit 2**, how it came into the possession of any Yusuf Family Member or Yusuf attorney and when it came into possession of any Yusuf Family Member or Yusuf attorney.

RESPONSE:

It is Yusuf Yusuf's recollection that he obtained a physical copy directly from Scotiabank after the discovery of the check for \$460,000.00 in an effort to investigate the matter. It is also possible that Sergeant Mark A. Corneiro received a copy of it directly from Scotiabank during his investigation as well. It is Mike Yusuf's recollection that Attorney DeWood was present when the information was provided to Sergeant Mark A. Corneiro.

Upon further inquiry, it is believed that the document was also later secured from Scotiabank pursuant to a subpoena issued in the *Hamed v Yusuf*, SX-12-CV-370 (the "370 Case").

INTERROGATORY NO. 5

Please Identify the source of the document marked Exhibit 3, how it came into the possession of any Yusuf Family Member or Yusuf attorney and when it came into possession of any Yusuf Family Member or Yusuf attorney

RESPONSE:

It is Yusuf Yusuf's recollection that he obtained a physical copy directly from Scotiabank after the discovery of the check for \$460,000.00 in an effort to investigate the matter. It is also possible that Sergeant Mark A. Corneiro received a copy of it directly from Scotiabank during his investigation as well. It is Mike Yusuf's recollection that Attorney DeWood was present when the information was provided to Sergeant Mark A. Corneiro.

Upon further inquiry, it is believed that the document was also later secured from Scotiabank pursuant to a subpoena issued in the *Hamed v Yusuf*, SX-12-CV-370 (the "370 Case").

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Case No. SX-13-CV-120
Plaintiff Yusuf Yusuf's Responses to Defendant
Mufeed Hamed's First Interrogatories
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INTERROGATORY NO. 6

With regard to the Request To Admit that asks the following: "*ADMIT or DENY that a Yusuf Family Member or members has knowledge of when, by whom or under what circumstances the phrase "One Hamed and One Yusuf" to this card*" Describe with particularity and with reference to any related documents when, by whom and under what circumstances the phrase "One Hamed and One Yusuf" was typed on the Signature Card that is Exhibit 2 thereto.

RESPONSE:

It was requested that this restriction be added to the account in early 2012. Both Mike Yusuf and Waleed Hamed signed the Information Gathering Form which showed this restriction in the instructions at page 4 of 7, ¶16(B). Mike Yusuf has no specific recollection as to this particular card but simply knows that the request was made and the bank prepared the documents.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

INTERROGATORY NO. 7

Describe, with particularity as to dates and persons or documents present, all meetings, conferences or communications between any member of the Yusuf Family and Scotiabank, the VI Daily News, the VIPD, any other VI Government official, regarding the alleged embezzlement from the Plessen Account.

RESPONSE:

As to any meetings with Scotiabank, there were no meetings *per se*, rather, it is Yusuf Yusuf's recollection that he obtained a physical copy directly from Scotiabank after the discovery of the check for \$460,000.00 in an effort to investigate the matter. Mike Yusuf had no particular contact with any specific individual but simply made the request to whomever was present at the bank at the time.

There was no meeting with the VI Daily News. Mike Yusuf received a call from them, answered no questions and referred them to the V.I.P.D.

Mike Yusuf did file a report and met with Sergeant Mark A. Corneiro. It is Mike Yusuf's recollection that Attorney DeWood was present when the information was provided to Sergeant Mark A. Corneiro. Mike Yusuf recalls that there were a few calls between himself and Sergeant Corneiro. Sergeant Corneiro undertook his own investigation as well.

The documents received were those set forth in Exhibits 1,2 and 3. Mike Yusuf also obtained a copy of the Department of Consumer Affairs Print-Out dated February 14, 2013 from that office directly.

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

DATED: 12/16/2016

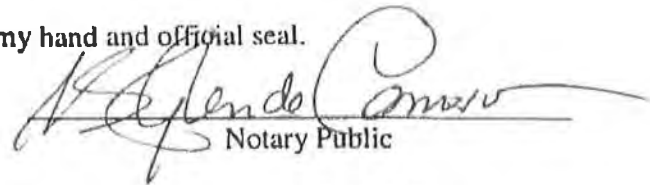


YUSUF YUSUF

TERRITORY OF THE U.S. VIRGIN ISLANDS)
DISTRICT OF St. Croix) ss.:

On this, the 12th day of December, before me, the undersigned officer, personally appeared Yusuf Yusuf, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that he/she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

K. Glenda Cameron
Commission Number LPN 013-14
Expiration Date: May 29, 2018

Yusuf Yusuf, et al. (v. Mohammad Hamed, et al.)
Case No. SX-13-CV-120
Plaintiff Yusuf Yusuf's Responses to Defendant
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DATED: December 17th, 2016

By:

DUDLEY, TOPPER AND FEUERZEIG, LLP


CHARLOTTE K. PERRELL

(V.I. Bar #1281)

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that on this 17th day of December, 2016, I caused a true and exact copy of the foregoing **PLAINTIFF YUSUF YUSUF'S RESPONSES TO DEFENDANT MUFEEED HAMED'S FIRST INTERROGATORIES** to be served upon the following via e-mail:

Mark W. Eckard, Esq.
HAMM & ECKARD, LLP
5030 Anchor Way – Suite 13
Christiansted, St. Croix
U.S. Virgin Islands 00820-4692
E-Mail: meckard@hammneckard.com

Jeffrey B.C. Moorhead, Esq.
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1132 King Street
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Frances Thomas

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

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EXHIBIT B

EXHIBIT

B

ByLaws Plessen Corporation

**BY-LAWS
OF
PLESSEN ENTERPRISES, INC.
Adopted on April 30, 1997**

**ARTICLE I
STOCKHOLDERS**

Section 1.1 Annual Meeting. The annual meeting of the Stockholders of the Corporation shall be held each year during the third month after the close of the Corporation's fiscal year, on a day to be duly designated by the Board of Directors, for the purpose of electing Directors and for the transaction of any other corporate business that may come before the meeting.

Section 1.2 Special Meetings. A special meeting of the Stockholders may be called, at any time and for any purpose or purposes, by the President, by a Vice President, or by a majority of the Board of Directors. A special meeting of the Stockholders shall be called forthwith by the President, by a Vice President, by the Secretary, or by any Director of the Corporation at any time, upon the written request of the Stockholders entitled to cast at least twenty-five percent (25%) of all the votes entitled to be cast at the meeting. However, a special meeting need not be called to consider any matter that is substantially the same as a matter voted on at any special meeting of the Stockholders held during the preceding twelve (12) months, unless requested by the Stockholders entitled to cast a majority of all votes entitled to be cast at the meeting. Whenever a special meeting is called by written request of the Stockholders, the request shall state the purpose or purposes of the meeting. Business transacted at any special meeting of Stockholders shall be confined to the purpose or purposes stated in the notice of the meeting.

Section 1.3. Place of Holding Meetings. All meetings of Stockholders shall be held at the principal office of the Corporation, or elsewhere in the United States or its Territories as may be designated by the Board of Directors.

Section 1.4. Notice of Meetings. Written notice of each meeting of the Stockholders shall be given to each Stockholder in accordance with Section 7.2 of these By-Laws, at least ten (10) days and not more than ninety (90) days before the meeting. The notice shall state the place, day, and hour at which the meeting is to be held; in the case of a special meeting, the notice also shall state briefly the purpose or purposes of that special meeting.

Section 1.5. Quorum. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, at each meeting of the Stockholders, the presence in person or by proxy of the holders of record of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting constitutes a quorum. If less than a quorum is in attendance at the time for which the meeting has been called, the meeting may be adjourned from time to time by a majority vote of the Stockholders present in person or by proxy, without any notice other than by announcement at the meeting, until a quorum is in attendance. At any adjourned meeting

at which a quorum is in attendance, any business may be transacted that might have been transacted if the meeting had been held as originally called.

Section 1.6. Conduct of Meetings. Each meeting of the Stockholders shall be presided over by a chairman. The chairman shall be the President of the Corporation or, if the President is not present, a Vice President, or, if none of these Officers is present, a person to be elected at the meeting. The Secretary of the Corporation or, if the Secretary is not present, any Assistant Secretary shall act as secretary of the meeting; in the absence of the Secretary and any Assistant Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

Section 1.7. Voting.

A. At each meeting of the Stockholders, every Stockholder entitled to vote at the meeting has one (1) vote for each share of stock standing in his or her name on the books of the Corporation on the date established for the determination of Stockholders entitled to vote at the meeting. This vote may be cast by the Stockholder either in person or by written proxy signed by the Stockholder or by the Stockholder's duly authorized attorney in fact. Unless the written proxy expressly provides for a longer period, it shall bear a date not more than eleven (11) months prior to the meeting. The written proxy shall be dated, but need not be sealed, witnessed, or acknowledged.

B. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, all elections shall be had and all questions shall be decided by a majority of the votes cast at a duly constituted meeting. If the chairman of the meeting so determines, a vote by ballot may be taken upon any election or matter. A vote by ballot shall be taken upon the request of the Stockholders entitled to cast at least ten percent (10%) of all the votes entitled to be cast on the election or matter. The chairman of the meeting may appoint one or more tellers of election. In that event, the proxies and ballots shall be held by the tellers, and all questions as to the qualification of voters, the validity of proxies and the acceptance or rejection of votes shall be decided by the tellers. If no teller is appointed, these duties shall be performed by the chairman of the meeting.

Section 1.8 Informal Action by Stockholders. Any action required or permitted to be taken at any meeting of the Stockholders may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 196, as from time to time amended.

ARTICLE II BOARD OF DIRECTORS

Section 2.1. General Powers. The property and business of the Corporation shall be managed under the direction of the Board of Directors of the Corporation.

Section 2.2. Number and Term of Office. The number of Directors shall be such

number as may be designated from time to time by resolution of a majority of the entire Board of Directors. However, the number of Directors may not be less than three. Directors need not be Stockholders. Except as otherwise provided in these By-Laws, the Directors shall be elected each year at the annual meeting of the Stockholders, and each Director shall serve until his or her successor is duly elected and qualifies.

Section 2.3. Removal of Directors. Except as otherwise provided in this Section and unless the Charter of the Corporation provides otherwise, the Stockholders may remove any Director from office, with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast for the election of Directors.

Section 2.4. Filling of Vacancies.

A. If a vacancy in the Board of Directors results from the removal of a Director, the Stockholders may elect a successor to fill that vacancy. However, if the Stockholders of any class or series are entitled separately to elect one or more Directors, the Stockholders of that class or series may elect a successor to fill any vacancy that results from the removal of a Director elected by the class or series.

B. Except as otherwise provided in this Section, (i) if a vacancy in the Board of Directors results from an increase in accordance with these By-Laws of the number of Directors, a majority of the entire Board of Directors may elect the person to fill that vacancy, and (ii) if a vacancy in the Board of Directors results from any other cause whether by reason of a Director's death, resignation, disqualification, or otherwise a majority of the remaining Directors, whether or not sufficient to constitute a quorum, may elect a successor to fill that vacancy.

C. A Director elected to fill a vacancy shall serve until the next annual meeting of the Stockholders and, thereafter, until his or her successor is duly elected and qualifies.

Section 2.5. Annual and Regular Meetings. The annual meeting of the Board of Directors shall be held immediately following the annual Stockholders' meeting at which a Board of Directors is elected. Regular meetings of the Board of Directors may be held, without notice, at such time and place as determined from time to time by resolution of the Board. However, notice of every resolution of the Board fixing or changing the time or place for the holding of regular meetings of the Board shall be mailed to each Director at least ten (10) days before the first meeting held pursuant to the resolution. Any business may be transacted at the annual meeting and at any regular meeting of the Board.

Section 2.6. Special Meetings. A special meeting of the Board of Directors may be called, at any time and for any purpose or purposes, by the President or by a Vice President. A special meeting of the Board of Directors shall be called forthwith by the President or by the Secretary upon the written request of a majority of the Board of Directors. Written notice of each special meeting of the Board of Directors shall be given to each Director by

mailing that notice, in accordance with Section 7.2 of these By-Laws, at least three (3) days before the meeting, or by telegraphing or hand-delivering that notice at least one (1) day before the meeting. Any business may be transacted at any special meeting of the Board. Any Director may, in writing, waive notice of the time, place, and purposes of any special meeting. Any meeting of the Board of Directors whether an annual, regular, or special meeting may be adjourned from time to time to reconvene at the same or some other place, and no notice need be given of the reconvened meeting other than by announcement at the adjourned meeting.

Section 2.7. Place of Meeting and Offices. The Board of Directors may hold its meetings, have one or more offices, and keep the books of the Corporation at such place or places, either within or without the Territory of the United States Virgin Islands, as determined from time to time by resolution of the Board of Directors or by written consent of all of the Directors. Members of the Board of Directors or a committee of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time, and such participation in a meeting shall be deemed to constitute presence in person at such meeting.

Section 2.8. Quorum. At each meeting of the Board of Directors, a majority of the entire Board of Directors constitutes a quorum for the transaction of business. If less than a quorum is present at any meeting, a majority of those present may adjourn the meeting from time to time. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, the act of a majority of the Directors present at any meeting at which there is a quorum constitutes the act of the Board of Directors.

Section 2.9. Compensation of Directors. Directors shall not receive any stated salary for their services as such. However, each Director is entitled to receive from the corporation reimbursement of the expenses incurred by the Director in attending any annual, regular, or special meeting of the Board or of a committee of the Board. In addition, by resolution of the Board of Directors, a fixed sum may be also be allowed for attendance at each annual, regular, or special meeting of the Board or of a committee of the Board. Reimbursement and compensation to a Director for attending a meeting shall be payable even if the meeting was adjourned because of the absence of a quorum. Nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation for that service.

Section 2.10. Executive Committee. By resolution of a majority of the entire Board of Directors, the Board may appoint an executive committee consisting of two or more Directors. The executive committee may exercise all of the powers and authority of the Board of Directors between meetings of the Board, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the

Board of Directors or in the executive committee's own membership. Vacancies in the executive committee shall be filled by the Board of Directors. The executive committee shall meet at stated times or on notice to all of its members by any one of its members. It shall fix its own rules of procedure. Unanimous vote or consent shall be necessary in every case. The executive committee shall keep regular minutes of its proceedings and report those proceedings to the Board of Directors. Without limiting the generality of the foregoing, the executive committee is specifically authorized to execute customary banking resolutions for corporate accounts and for borrowing.

Section 2.11. Additional Committees. By resolution of a majority of the entire Board of Directors, the Board may designate one or more additional committees, each committee to consist of two or more Directors. To the extent provided in the resolution, each committee may exercise all of the powers and authority of the Board of Directors, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the Board of Directors or in the committee's own membership. Vacancies in a committee shall be filled by the Board of Directors. Each committee shall have the name designated from time to time by resolution of the Board of Directors.

Section 2.12. Informal Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 67(b), as from time to time amended.

ARTICLE III OFFICERS

Section 3.1. Election, Tenure, and Compensation. The Officers of the Corporation shall be a President, a Secretary, and a Treasurer. The Corporation shall have such other Officers e.g., one or more Vice Presidents and one or more Assistant Secretaries or Assistant Treasurers as the Board of Directors from time to time considers necessary for the proper conduct of the business of the Corporation. The Officers shall be elected by the Board of Directors and shall serve at the pleasure of the Board. The President shall be a Director; the other Officers may, but need not be, Directors. Any two or more offices, except those of President and Secretary, may be held by the same person; however, no Officer may execute, acknowledge, or verify any instrument in more than one capacity if that instrument is required by law or by these By-Laws to be executed, acknowledged, or verified by two or more Officers. The compensation or salary paid all Officers of the Corporation may be fixed by resolutions of the Board of Directors. Except where otherwise expressly provided in a contract duly authorized by the Board of Directors, all Officers, agents, and employees of the corporation are subject to removal at any time by the Board of Directors and shall hold office at the discretion of the Board of Directors or of the Officers appointing

them.

Section 3.2. Powers and Duties of the President. The President shall be the Chief Executive Officer of the Corporation and shall have general charge and control of all its business affairs and properties. The President shall preside at all meetings of the Stockholders. The President may be a member of the Board of Directors and, if a member, shall preside at all meetings of the Board of Directors unless the Board of Directors, by a majority vote of a quorum of the Board, elects a Chairman other than the President to preside at meetings of the Board of Directors. The President may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. The President shall have the general powers and duties of supervision and management usually vested in the office of president and of corporation. The President shall be an ex-officio voting member of all standing committees. The President shall perform such other duties as from time to time are assigned to the President by the Board of Directors.

Section 3.3 Powers and Duties of the Vice President. The Board of Directors may appoint one or more Vice Presidents. Each Vice President (except as otherwise provided by resolution of the Board of Directors) shall have the power to sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as from time to time are assigned to that Vice President by the Board of Directors or by the President. In case of the absence or disability of the President, the duties of that office shall be performed by a Vice President; the taking of any action by any Vice President in place of the President shall be conclusive evidence of the absence or disability of the President.

Section 3.4 Secretary. The Secretary shall give, or cause to be given, notice of all meetings of Stockholders and Directors and all other notices required by law or by these Stockholders and of the Directors in books provided for that purpose and shall perform such other duties as from time to time are assigned to the Secretary by the Board of Directors or the President. The Secretary shall attest to or witness all instruments executed by or on behalf of the Corporation requiring same. In general, the Secretary shall perform all the duties generally incident to the office of Secretary of a corporation, subject to the control of the Board of Directors and the President.

Section 3.5. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation and shall keep full and accurate account of receipts and disbursements in books belonging to the corporation. The Treasurer shall deposit all of the Corporation's money and other valuables in the name and to the credit of the Corporation in such depository or depositories as from time to time designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as ordered by the Board of Directors, taking proper vouchers for those disbursements. The Treasurer shall render to the President and the board of Directors, whenever either of them so requests, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Directors,

for the faithful performance of the duties of his or her office and for the removal from office, of all books, papers, vouchers, money, and other property belonging to the Corporation, of whatever kind, in his or her possession or under his or her control. In general, the Treasurer shall perform all the duties generally incident to the office of treasurer of a corporation, subject to the control of the Board of Directors and the President.

Section 3.6. Assistant Secretary. The Board of Directors or the President may appoint one or more Assistant Secretaries. Each Assistant Secretary (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Secretary in the absence or disability of the Secretary and shall have such other powers and shall perform such other duties as from time to time are assigned to that Assistant Secretary by the Board of Directors or the President. In case of the absence or disability of the Secretary, the duties of that office shall be performed by an Assistant Secretary; the taking of any action by any Assistant Secretary in place of the Secretary shall be conclusive evidence of the absence or disability of the Secretary.

Section 3.7. Assistant Treasurer. The Board of Directors may appoint one or more Assistant Treasurers. Each Assistant Treasurer (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Treasurer in the absence or disability of the Treasurer and shall have such other powers and shall perform such other duties as from time to time are assigned to that Assistant Treasurer by the Board of Directors or the President. In case of the absence or disability of the Treasurer, the duties of that office shall be performed by an Assistant Treasurer; the taking of any action by any Assistant Treasurer in place of the Treasurer; the conclusive evidence of the absence or disability of the Treasurer.

Section 3.8. Subordinate Officers. The Corporation may have such subordinate officers as the Board of Directors from time to time deems advisable. Each subordinate officer shall hold office for such period and shall perform such duties as from time to time are prescribed by the Board of Directors, the President, or the committee or officer designated pursuant to this Article.

ARTICLE IV CAPITAL STOCK AND OTHER SECURITIES

Section 4.1. Issue of Certificates of Stock. The certificates for shares of the capital stock of the Corporation shall be of such form, not inconsistent with the Charter of the Corporation, as has been approved by the Board of Directors. All certificates shall be signed by the President or by a Vice President and countersigned by the Secretary or by an Assistant Secretary. Any signature or countersignature may be either manual or facsimile signature. All certificates for each class of stock shall be consecutively numbered. The name and address of the person owning the shares issued shall be entered in the

Corporation's books.

Section 4.2. Transfer of Shares. Shares of the capital stock of the Corporation may be transferred on the books of the Corporation only by the holder of those shares, in person or by his or her attorney in fact, and only upon surrender and cancellation of certificates for a like number of shares. All certificates surrendered to the Corporation for transfer shall be cancelled, and no new certificates representing the same number of shares may be issued until the former certificate or certificates for the same number of shares have been so surrendered and canceled.

Section 4.3. Registered Stockholders. The Corporation is entitled to treat the holder of record of any shares of stock as the holder in fact of those shares. Accordingly, the Corporation is not bound to recognize any equitable or other claim to, or interest in, those shares in the name of any other person, whether or not the Corporation has had express or other notice of that claim or interest, except as expressly provided by the laws of the Territory of the United States Virgin Islands.

Section 4.4. Record Date and Closing of Transfer Books. The Board of Directors may set a record date or direct that the stock transfer books be closed for a stated period for the purpose of making any proper determination with respect to Stockholders, including which Stockholders are entitled to notice of a meeting, vote at a meeting, receive a dividend, or be allotted other rights. The record date may not be more than fifty (50) days before the date on which the action requiring the determination will be taken. The transfer books may not be closed for a period longer than twenty (20) days. In the case of a meeting of Stockholders, the record date or the closing of the transfer books shall be at least ten (10) days before the date of the meeting.

Section 4.5. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate that is alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen, or destroyed. In its discretion and as a condition precedent to the issuance of a new certificate, the Board of Directors may require the owner of the certificate or the owner's legal representative to give bond, with sufficient surety, to indemnify the Corporation against any loss or claim that may arise by reason of the issuance of a new certificate.

Section 4.6. Restrictions on Transfer. Notwithstanding any other provision of these By-Laws to the contrary, no securities issued by the Corporation may be transferred unless (i) those securities are registered with the Securities and Exchange Commission or other jurisdiction, as appropriate, or (ii) the Corporation has received an opinion of counsel for the transferor or transferee, acceptable to counsel for the Corporation, that the transfer would not violate applicable state and federal securities laws, provided, however, that the restrictions set forth in clauses (i) and (ii), above, shall be deemed waived as to a specific transfer of securities in the event the Corporation transfers such securities on its books without having received either evidence of such registration or such opinion of counsel.

ARTICLE V
BANK ACCOUNTS AND LOANS

Section 5.1. Bank Accounts.

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority to deposit any funds of the Corporation in such financial institutions as from time to time have been designated by the Board of Directors. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority to withdraw any or all of the funds of the Corporation so deposited in a financial institution, upon checks, drafts, or other instruments or orders of the payment of money, drawn against the account or in the name or behalf of the Corporation, and made or signed by those designated Officers or agents.

B. From time to time the Corporation shall certify to each financial institution in which funds of the Corporation are deposited, the signatures of the Officers or agents of the Corporation authorized to draw against those funds. Each financial institution with which funds of the Corporation are deposited is authorized to accept, honor, cash, and pay, without limit as to amount, all checks, drafts, or other instruments or orders for the payment of money, when drawn, made, or signed by Officers or agents so designated by the Board of Directors, until the financial institution has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

C. If the Board of Directors fails to designate the persons by whom checks, drafts, and other instruments or orders for the payment of money may be signed, as provided in this Section, all checks, drafts, and other instruments or orders for the payment of money shall be signed by the President or a Vice President and countersigned by the Secretary or Treasurer or by an Assistant Secretary or Assistant Treasurer of the Corporation.

Section 5.2. Loans.

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority (i) to effect loans, advances, or other forms of credit at any time or times for the Corporation, from such banks, trust companies, institutions, corporations, firms, or persons, in such amounts and subject to such terms and conditions, as the Board of Directors from time to time has designated; and (ii) as security for the repayment of any loans, advances, or other forms of credit authorized, to assign, transfer, endorse, and deliver, either originally or in addition or substitution, any or all personal property, real property, stocks, bonds, deposits, accounts, documents, bills, accounts receivable, and other commercial paper and evidences of debt or other securities, or any rights or interests at any time held by the Corporation; and (iii) in connection with any loans, advances, or other forms of credit so authorized, to make, execute, and deliver one or more notes, mortgages, deeds of trust, financing statements, security agreements,

acceptances, or written obligations of the Corporation, on such terms and with such provisions as to the security or sale or disposition of them as those Officers or agents deem proper; and (iv) to sell to, or discount or rediscount with, the banks, trust companies, institutions, corporations, firms, or persons making those loans, advances, or other forms of credit, any and all commercial paper, bills, accounts receivable, acceptances, and other instruments and evidences of debt at any time held by the Corporation, and, to that end, to endorse, transfer, and deliver the same.

B. From time to time the Corporation shall certify to each bank, trust company, institution, corporation, firm, or person so designated, the signatures of the Officers or agents so authorized. Each bank, trust company, institution, corporation, firm, or person so designated is authorized to rely upon such certification until it has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

ARTICLE VI INDEMNIFICATION

Section 6.1. Indemnification to Extent Permitted by Law. The Corporation shall indemnify to the full extent permitted by law any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the person is or was a Director, Officer, employee, or agent of the corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation.

Section 6.2. Payment of Expenses In Advance of Final Disposition of Action. Expenses (including attorneys' fees) incurred in defending a civil, criminal, administrative, or investigative action, suit, or proceeding shall be paid by the Corporation in advance of the final disposition of that action, suit, or proceeding, on the conditions and to the extent permitted by law.

Section 6.3. Non-Exclusive Right to Indemnity; Insurer to Benefit of Heirs and Personal Representatives. The rights of indemnification set forth in this Article are in addition to all rights to which any Director, Officer, employee, agent, trustee, administrator, or other fiduciary may be entitled as a matter of law, and shall continue as to a person who has ceased to be a Director, Officer, employee, agent, trustee, administrator, or other fiduciary, and shall inure to the benefit of the heirs and personal representatives of that person.

Section 6.4. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the

Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation, against any liability asserted against and incurred by that person in any such capacity, or arising out of that person's status as such, whether or not the Corporation would have the power or would be required to indemnify that person against that liability under the provisions of this Article or the laws of this State.

Section 6.5. Certain Persons not to be Indemnified. Notwithstanding the provisions of this Article, the Corporation may not indemnify any bank, trust company, investment adviser, or actuary against any liability which that entity or person may have by reason of acting as a "fiduciary" of any employee benefit plan (as that term is defined in the Employees Retirement Income Security Act, as amended from time to time) established for the benefit of the Corporation's employees.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be such as has been duly designated by the Board of Directors.

Section 7.2. Notices.

A. Except as otherwise provided by law or these By-Laws, whenever notice is required by law or these By-Laws to be given to any Stockholder, Director, or Officer, it shall be construed to mean either (i) written notice personally served against written receipt at the address that appears for that person on the books of the Corporation, or (ii) written notice transmitted by mail, by depositing the notice in a post office or letter box, in a post-paid sealed wrapper, addressed to the Stockholder, Director, or Officer at the address that appears for that person on the books of the Corporation or, in default of any other address for a Stockholder, Director, or Officer, at the general post office situated in the city or county of his or her residence, which notice shall be deemed to be given at the time it is thus mailed.

B. All notices required by law or these By-Laws shall be given by the Secretary of the Corporation. If the Secretary is absent or refuses or neglects to act, the notice may be given by any person directed to do so by the President or, with respect to any meeting called pursuant to these By-Laws upon the request of any Stockholders or Directors, by any person directed to do so by the Stockholders or Directors upon whose request the meeting is called.

C. Any Stockholder, Director, or Officer may waive any notice required to be

given under these By-Laws.

Section 7.3. General Counsel. The Board of Directors may appoint a general counsel to have dominion over all matters of legal import concerning the Corporation. It shall be the duty of the Officers and the Directors to consult from time to time with the general counsel (if one has been appointed), as legal matters arise. The general counsel shall be given notice of all meetings of the Board of Directors, in the manner provided in Section 2.5 and 2.6 of the By-Laws, and the general counsel shall be accorded the opportunity to attend these meetings for the purpose of consulting with and advising the Board of Directors on any matters of a legal nature. The general counsel to the Corporation shall be subject to removal and replacement by the Board of Directors.

Section 7.4. Corporate Seal. The Board of Directors may provide a suitable seal, bearing the name of the Corporation, which shall be in the charge of the Secretary. The Board of Directors may authorize one or more duplicate seals and provide for their custody. Regardless of whether a seal is adopted by the Board of Directors, whenever the Corporation is required to place its corporate seal on a document, it shall be sufficient to meet the requirements of any law, rule, or regulation relating to a corporate seal to place the word ("seal") adjacent to the signatures of the person authorized to sign the document on behalf of the Corporation.

Section 7.5. Books and Records. The Corporation shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its Stockholders and Board of Directors and of any executive or other committee when exercising any of the powers or authority of the Board of Directors. The books and records of the Corporation may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form, but may be maintained in the form of a reproduction.

Section 7.6. Bonds. The Board of Directors may require any Officer, agent or employee of the Corporation to give a bond to the Corporation, conditioned upon the faithful discharge of his or her duties, with such surety and in such amount as is satisfactory to the Board of Directors.

Section 7.7. Severability. The invalidity of any provision of these By-Laws shall not affect the validity of any other provision, and each provision shall be enforced to the extent permitted by law.

Section 7.8. Gender. Whenever used in these By-Laws, the masculine gender includes all genders.

ARTICLE VIII **AMENDMENTS**

The Board of Directors has full power and authority to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual, regular, or special meeting a part of the general business of that meeting subject to the power of the Stockholders to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual meeting as part of the general business of that meeting, or at any special meeting for which the notice of that special meeting stated the substance of the proposed amendment, alteration, supplement, or repeal.

