

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

MOHAMMAD HAMED, by his)
authorized agent **WALEED HAMED**,)
)
 Plaintiff/Counterclaim Defendant,)
)
 vs.)
)
 FATHI YUSUF and)
 UNITED CORPORATION,)
)
 Defendants/Counterclaimants,)
)
 vs.)
)
 WALEED HAMED, WAHEED)
 HAMED, MUFEED HAMED,)
 HISHAM HAMED,)
 and **PLESSEN ENTERPRISES, INC.**,)
)
 Counterclaim Defendants.)
 _____)

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
RE THE STATUTE OF LIMITATIONS DEFENSE BARRING DEFENDANTS'
CLAIMS PRIOR TO SEPTEMBER 16, 2006**

Defendants have now conceded that a partnership exists. However, they still seek to recover damages based on multiple pre-2006 claims. The relief sought is barred in part pursuant to the applicable statute of limitations. As such, this motion seeks to bar pre-September 16, 2006 claims in order to simplify the remaining issues before this Court, which will also greatly simplify discovery problems raised as well.

Defendants seek relief for a mish-mash of counts, variously labeled as breach of fiduciary duty, constructive trust/recoupment, conversion, breach of contract, debt, accounting and fraud. These claims will be broken into two groups.

I. The "Accounting" Claims

Pursuant to 5 V.I.C. §31(3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years. Further, as noted in *United v. Waheed Hamed*, 2013 WL 3724921 (V.I.Super. 2013) (Dunston, J.) the statute of limitations for "accounting" and "recoupment/constructive trust" is also 6 years. In reaching this conclusion, Judge Dunston held as follows:

While Plaintiff lists "accounting" and "constructive trust or recoupment" as separate counts, they are equitable remedies, and therefore not separate causes of action. Thus, they do not carry a statute of limitations apart from the independent causes of action upon which they rely. *Id.* at *2 (footnotes omitted).

Thus, the limitations period for Defendants' myriad of similar claims is 6 years.¹ It is critical to note that claims pursuant to an accounting in a partnership dissolution are barred by the same time limits, as expressly stated in 26 V.I.C. § 75(c):

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law. (Emphasis added).²

¹ It should also be noted that 5 V.I.C. § 32(a) provides:

(a) An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in this chapter.

² This same provision has been enacted and uniformly followed in RUPA jurisdictions. See, e.g., *Baghdady v. Baghdady*, 3:05-CV-1494, 2008 WL 4630487 (D. Conn. Oct. 17, 2008) (quoting *Fike v. Ruger*, 754 A.2d 254, 264 (Del.Ch.1999), *aff'd* 752 A.2d 112 (Del.2000) and citing *TIFD v. Fruehauf*, 883 A.2d 854, 866 (Del.Ch.2004)), quoting from it as follows:

the language of the statute was adopted verbatim from § 405 of RUPA, which other states also adopted. In Delaware, one court stated with respect to this statute: "Thus, **it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because a dissolution occurs and a separate right to an accounting on dissolution arises.**" (Emphasis added.)

The final question to be addressed deals with when the statute of limitations commences on Defendants' counterclaims: when they were filed or do they date back to when Plaintiff filed his complaint. This was answered in *James v. Antilles Gas Co.*, 2000 WL 1349233 (V.I. Super. 2000) (Cabret, J.), which held that the statute of limitations governing counterclaims relates back to the time the original complaint was filed, which favors Defendants.

Thus, the statute of limitations for the damage claims asserted in Defendants' counterclaim for debt, breach of contract, conversion, breach of fiduciary duty, recoupment/constructive trust and accounting are all barred to the extent they arose prior to 6 years before the complaint was filed, which was on September 17, 2012, barring all damages based on these theories that arose before September 16, 2006.

As such, Plaintiff seeks an order barring all such damage claims based on these counts that arose before September 16, 2006.³

II. Fraud

Pursuant to 5 V.I.C. § 31(5), actions for fraud are subject to a two-year limitation period. *Montgomery v. Estate of Griffith*, 49 V.I. 255 (Super. 2008) (fraud is governed by the two-year limitations period). *Lawaetz v. Bank of Nova Scotia*, 23 V.I. 132, 653 F. Supp. 1278 (D. V.I. 1987); *Fountain Valley Corp. v. Wells*, 19 V.I. 607, 616 (D.V.I.1983).

Thus, the fraud claims asserted by Defendants are barred for any claim for damages that pre-date September 16, 2010, so that summary judgment is appropriate for this claim as well.

³ United's only remaining claim is for rent-an action for debt.

III. Conclusion

For the reasons set forth herein, Defendants' counterclaims should be limited to post-2006 claims, as all other claims are barred by the applicable statute of limitations.

A Proposed Order is attached.

Dated: May 13, 2014



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CERTIFICATE OF SERVICE

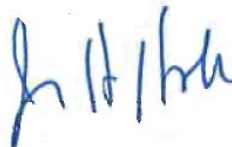
I hereby certify that on this 13th day of May, 2014, I served a copy of the foregoing Motion by email, as agreed by the parties, on:

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JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
RE THE STATUTE OF LIMITATIONS DEFENSE BARRING DEFENDANTS'
COUNTERCLAIM DAMAGES PRIOR TO SEPTEMBER 16, 2006**

Plaintiff hereby moves for partial summary judgment based on the statute of limitations defense raised as to Defendants' counterclaims. The basis for the motion is more fully set forth in the memorandum being submitted in support of said motion, which is incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the relief sought be granted. A proposed order is also being submitted with this motion.

Dated: May 13, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2014, I served a copy of the foregoing Motion by email, as agreed by the parties, on:

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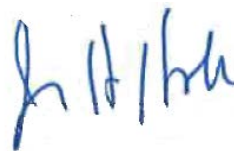
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ORDER

Upon consideration of the motion of Plaintiff as to the existence of a Partnership and the Court being fully informed as to the applicable statute of limitations and record herein, **ORDERED:**

1. All claims relating to debt, breach of contract, conversion, breach of fiduciary duty, constructive trust, recoupment and accounting accruing before September 16, 2006 as hereby **DISMISSED**, with any claim for fraud prior to September 16, 2010 being **DISMISSED** as well.

Entered this ____ day of May, 2014.

Douglas A. Brady
Judge of the Superior Court

A T T E S T: ESTRELLA GEORGE
Acting Clerk of the Court

By: _____

Deputy Clerk

cc: Nizar A. DeWood, Esq.
Mark W. Eckard, Esq.
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