

**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 and Counterclaimants.

vs.

WALEED HAMED, **WAHEED HAMED**,
MUFEED HAMED, **HISHAM HAMED**, and
PLESSEN ENTERPRISES, INC.,

Counterclaim Defendants.

Case No.: SX-2012-cv-370

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

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**
JURY TRIAL DEMANDED

**PLAINTIFF'S RESPONSE RE DEFENDANT'S MOTION TO STRIKE THE FILING OF
PLAINTIFF'S ACCOUNTING CLAIMS**

On October 14, the Defendant filed a belated motion to strike the Plaintiff's September 30th filing of his accounting claims and objections with this Court. The basis for the motion was (1) that this filing was done in violation of the directive of the Special Master and (2) that this filing contained certain financial information that should have

been redacted. As for the second point, a revised filing was made today, redacting the financial information, so this objection is moot once the Court signs the proposed Order allowing the Clerk to return the original filing to counsel.

As for the first point, counsel did not violate any such directive. As noted in the declaration of counsel, attached as **Exhibit 1**:

4. On September 30, 2016, the Plaintiff filed his "Notice of Partnership Claims and Objections" -- as required by the Special Master on August 31, 2016.
5. Just prior to this filing, I became aware for the first time of Judge Ross' prior email indicating in response to a September 22, 2016, email from Attorney Hodges that these filing should just be sent to him.
6. As I had sent an email on September 22nd in response to Attorney's Hodge's email objecting to his proposal that all filings be submitted only to the Special Master (See **Exhibit A**), I contacted Judge Ross about the position set forth in my September 22nd email.
7. On September 27, 2016, I spoke with Judge Ross, who told me he was just trying to head off as many issues as possible, but that we should proceed in whatever fashion we think appropriate, as the Court will have to decide what to do. He agreed that absent the consent of both parties, he cannot make any binding rulings, as he saw his his role limited to trying to get an agreement between the parties on as many issues as possible. However, as we discussed this point, I reminded him that the multiple prior attempts to reach an agreement between the parties on any issue had proven to be a waste of time.

Thus, filing the accounting objections and claims with the Court **was not in violation of any directive** from the Special Master, as suggested by the Defendant.¹

Moreover, the Plaintiff set forth the reasons for filing the accounting and claims with the Court in an email sent on September 22nd in response to Hamed's suggestion

¹ The attached declaration also further explains why counsel missed the email from Judge Ross when it was first sent on September 22nd, as the Apple iphone forum confirmed there were issues caused by new features of the new operating system. See **Exhibit 1**.

that this filing only be made with the Special Master. See **Exhibit A** attached to **Exhibit**

1. In that email, counsel succinctly explained his client's position as follows:

Dear Judge Ross- We disagree with several of the premises of Attorney Hodges email to you. ~~First~~, there has been no final partnership accounting, much less one that complies with RUPA. Second, there can be no determinations regarding the proposed distributions until all outstanding issues are resolved, nor did you request one. Thus, the provisions of the Plan referenced by Attorney Hodges are not in play. Moreover, we believe and have repeatedly pled that we have a right to a jury trial on the remaining fact issues, including statutes of limitations, claims of malfeasance in the disassociation and contested factual issues about claims. This both obviates any non-jury summary determination – and a determination by the master without the agreement of both parties. Finally, because it is absolutely critical that these documents be part of the official record of this case for any appeal, the claims must be filed with Court, as instructed by you.

While Judge Ross did not respond to this email in writing, he agreed with the comments when he spoke with counsel on September 27th, as noted.

More importantly, the position set forth therein articulates the position of the Plaintiff as to why the Plaintiff's accounting objections and claims were properly filed with this Court—there has been no formal accounting under RUPA, there is a proper demand for a jury on issues triable by a jury and these documents need to be part of the record in case of an appeal of any such claims.

Finally, since the Defendant's filings were received, the Plaintiff has filed two Rule 702 *Daubert* motions addressing the admissibility of two of the expert reports submitted by the Defendant. The Court, not the Special Master, needs to address these motions. Likewise, even the Defendant has acknowledged that discovery is needed before the claims can be addressed by the Court. Perhaps a telephonic hearing with the Court may be appropriate to discuss how to proceed from this point, but in any event, these matters are ones for the Court to resolve, not the Special Master.

In summary, now that the financial information has been resubmitted in a redacted form, it is respectfully submitted that the motion to strike the Plaintiff's accounting objections and claims should be denied.

Dated: October 17, 2016



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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
% edgarrossjudge@hotmail.com

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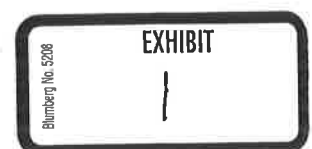
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DECLARATION OF AN ATTORNEY UNDER 28 U.S.C. §1746
JOEL H. HOLT, ESQ.

I, JOEL H. HOLT, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:

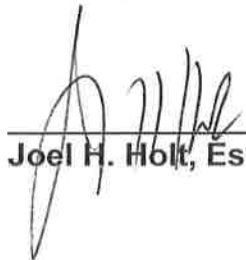
1. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.
3. I am lead counsel for Mohammad Hamed (now the Mohammad Hamed Estate) in *Hamed v. Yusuf et al.*, SX-12-CV-370.
4. On September 30, 2016, the Plaintiff filed his "Notice of Partnership Claims and Objections" -- as required by the Special Master on August 31, 2016.
5. Just prior to this filing, I became aware for the first time of Judge Ross' prior email indicating in response to a September 22, 2016, email from Attorney Hodges that these filing should just be sent to him.
6. As I had sent an email on September 22nd in response to Attorney's Hodge's email objecting to his proposal that all filings be submitted only to the Special Master (See **Exhibit A**), I contacted Judge Ross about the position set forth in my September 22nd email.
7. On September 27, 2016, I spoke with Judge Ross, who told me he was just trying to head off as many issues as possible, but that we should proceed in whatever fashion we think appropriate, as the Court will have to decide what to do. He agreed that absent the consent of both parties, he cannot make any binding rulings, as he saw his his role limited to trying to get an agreement between the parties on as many issues as possible. However, as we discussed this point, I reminded him that the multiple prior attempts to reach an agreement between the parties on any issue had proven to be a waste of time.
8. I should note that the email from Judge Ross that I did not see on September 22nd is not the only email I had a problem with, as I had other email issues between September 17th and October 13th after upgrading the operating system on my I-phone. On October 13th my office finally



resolved the issues caused by new features of the new operating system by logging on to the apple iphone forum where other users were experiencing the same problem, and followed the recommended changes to avoid this problem in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 17, 2016



Joel H. Holt, Esq.

From: Joel Holt <holtvi@aol.com>
To: ghodges <ghodges@dtflaw.com>; edgarrossjudge <edgarrossjudge@hotmail.com>
Cc: carl <carl@carlhartmann.com>
Subject: Re: Objections and Disagreements to the Partnership Accounting
Date: Thu, Sep 22, 2016 1:31 pm

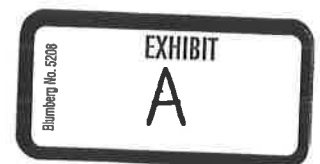
Dear Judge Ross:

We disagree with several of the premises of Attorney Hodges email to you. First, there has been no final partnership accounting, much less one that complies with RUPA. Second, there can be no determinations regarding the proposed distributions until all outstanding issues are resolved, nor did you request one. Thus, the provisions of the Plan referenced by Attorney Hodges are not in play. Moreover, we believe and have repeatedly pled that we have a right to a jury trial on the remaining fact issues, including statutes of limitations, claims of malfeasance in the disassociation and contested factual issues about claims. This both obviates any non-jury summary determination – and a determination by the a master without the agreement of both parties. Finally, because it is absolutely critical that these documents be part of the official record of this case for any appeal, the claims must be filed with Court, as instructed by you.

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—Original Message—

From: Gregory H. Hodges <ghodges@dtflaw.com>
To: 'Edgar Ross' <edgarrossjudge@hotmail.com>
Cc: JOEL HOLT <holtvi@aol.com>
Sent: Thu, Sep 22, 2016 12:11 pm
Subject: RE: Objections and Disagreements to the Partnership Accounting



Dear Judge Ross,

It is my understanding that your directive below for each partner to file his claim against the partnership or the other partner by September 30 essentially implements the following provisions set forth at § 9, Step 6, of the Plan: "Within forty-five (45) days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination." In anticipation of complying with your directive, it would be appreciated if you would confirm that the competing accounting claims/distribution plans need only be submitted to you and served on counsel, rather than filed with the Court. Not only is this consistent with the quoted language, but it is consistent with past practice. For example, while the Liquidating Partner has been filing his bi-monthly reports with the Court, the detailed financial information referenced in those reports (e.g. balance sheets and income statements) is submitted by John Gaffney only to you and counsel. The document(s) we contemplate submitting to you on September 30 likewise include detailed financial information that need not be a matter of public record, unless you

subsequently determine otherwise. Accordingly, I request your authorization to submit Yusuf's accounting claim/distribution plan only to you with service on counsel. I would plan to file with the Court an appropriate notice of the submission.
Regards,

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From: Edgar Ross [<mailto:edgarrossjudge@hotmail.com>]
Sent: Wednesday, August 31, 2016 6:49 PM
To: Gregory H. Hodges; JOEL HOLT
Cc: Douglas A. Brady; Fathi Yusuf; John Gaffney
Subject: Objections and Disagreements to the Partnership Accounting

Now that the Partnership Accounting is more than 99% completed and have been distributed to the partners, I am giving the partners thirty (30) days, i.e., until September 30, 2016, to file any objection or disputes any item in the accounting. Failure to object or dispute the accounting within said time is a waiver of the right to object or dispute any item contained therein.

Additionally, any partner who has a monetary or property claim against the partnership or a partner must file such claim in writing on or before September 30, 2016. Each claim shall include the date of the activity giving rise to the claim, its factual and/or legal basis, and the relief requested. Failure to file a claim may result in a waiver of the right to make a claim.

The fact that a claim is the subject of a pending civil action does not excuse a partner from raising it in the liquidation process and the failure to raise it in the liquidating process may affect the outcome of the civil action.

EDR, Master.