

**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

**HAMED'S OPPOSITION TO YUSUF'S
MOTION TO STRIKE SUPPLEMENTAL CLAIMS**

Based upon new admissions contained in information produced by Yusuf in his September 30th filing of his claims, the Plaintiff filed a short, four-page *Notice* identifying two new claims on October 6, 2016, entitled "*Notice of Hamed's First Supplemental Claims Occasioned by Yusuf's Disclosures in his Claims.*" Indeed, one of the claims

was based on an acknowledgment by Yusuf that he owed more funds related to the Dorothea transaction than the Plaintiff realized, which Yusuf *offered to pay*.

Notwithstanding these admissions, Yusuf filed a Motion to Strike these two supplemental claims on October 24th. It is respectfully submitted that this Court should not waste a lot of time on these legal arguments, as it can summarily allow these claims (filed 4 business days after the September 30th deadline) to be filed and sort them out later to avoid a further waste of this Court's time now.

However, out of an abundance of caution, the Plaintiff will still address the three reasons advanced by Yusuf to strike Hamed's Notice of Supplemental claims. Each is discussed in the order raised.

I. Yusuf re-states his view that the Notice should not be filed with the Court.

At page 2, Yusuf states:

Yusuf hereby adopts and incorporates the arguments set forth in his Motion to Strike Hamed's Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting filed on October 14, 2016 and his Reply to Plaintiff's Response to Motion to Strike Hamed's Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting filed on October 20, 2016 in further support of this motion.

Because Yusuf merely incorporates prior arguments, Hamed hereby incorporates his prior responses – noting that the Special Master agreed that the filing could be made with the Court.

II. Yusuf argues that there can be no claims filed after September 30, 2016.

Yusuf contends that because the Master asked for claims by September 30, 2016, no additional claims can be raised *if the underlying information is anywhere in the thousands of boxes of partnership materials spread out over numerous locations*. At page 2 he argues:

Hamed's Supplemental Claims are untimely because they were not submitted by the September 30, 2016 deadline imposed by the Master and all of the information underlying Hamed's Supplemental Claims was **available** to Hamed and his counsel for years. (Emphasis added)

This is wrong for four distinct reasons. First, as Hamed has previously mentioned on several occasions, the dissolution partner cannot rest on a contention that information has been provided in a RUPA accounting just because it is "available" somewhere in a massive number of boxes. In *Laurence v. Flashner*, the court stated the rule:

The Uniform Partnership Act provides that a partner has a right to have an accounting as to his interest when he leaves the partnership. (Ill.Rev.Stat.1987, ch. 106½, par. 43.) An accounting is a statement of receipts and disbursements which should show all of the detailed financial transactions of the business including a listing of the original contributions and current assets and liabilities of the partnership. [citations omitted]* * *

*The record does not reveal that defendants prepared or commissioned audits or otherwise explained or documented the manner and method by which the value or allocation of plaintiffs' unit interests in the partnership were determined. In an action for an accounting, the defendant has the burden to prove that he has been completely frank and honest with his partner, and has made full disclosure. (Bakalis v. Bressler (1953), 1 Ill.2d 72, 115 N.E.2d 323.) **Here, defendants argued and the circuit court [incorrectly] concluded that, since many boxes of documents were made available for inspection by plaintiffs, an accounting had been given.** (Emphasis added.)

Id. at 565 N.E.2d 146, 1990 WL 186700 (Ill. App. Ct. 1990). The supplemental claims involve new, recently disclosed subject matter and were filed in direct response to issues raised in Yusuf's new claims filing.

Second, in discovery, Hamed has repeatedly asked for documents and information on which Yusuf would rely in this action. Many of the documents in his claims were not supplied in discovery. They may have been in boxes in the dissolution partner's possession – but were not specifically proffered under the continuing

obligation to supplement *once Yusuf knew they would be used*. To say that Yusuf sandbagged Hamed would be an understatement.

Third, Yusuf himself has stated that *he will be making additional claims* “based upon the information [becomes] available.” In his main claims filing on September 30, 2016, he states:

[At page 16] “**The [Yusuf] Claim addresses or resolves many but not all of the open claims** between the Partners and related entities. To fully and finally complete the dissolution of the Partnership and accomplish a final distribution to the Partners, further discovery will be required in this case and related litigation.”

* * * *

[At page 17] “Additional information which has been or will be sought from Hamed's estate and his agents or representatives reflecting their personal finances is expected to reveal additional undisclosed withdrawals or personal expenses paid with Partnership funds. Hence, **additional discovery is needed to determine if such additional undisclosed withdrawals occurred which would result in a revised proposed distribution as to the historical withdrawals**. (Emphasis added.)

Similarly, in Exhibit A of his September 30th filing– the proposed Distribution Plan, he states:

This amount represents the sum of 59,670,675.. . . It represents the amount known as of September 30,2016 **based upon the information available**, not including any punitive damages to which Yusuf may be entitled. **It is subject to further revision** following the reopening of discovery. (Emphasis added.)

So, Yusuf admits he may file more claims. His argument that such supplemental claims must somehow be limited by what is in the thousands of boxes is absurd, as claims will arise as information is uncovered or relied upon. Indeed, the two new claims were ‘discovered’ when Yusuf filed his accounting and admitted he owed additional funds to Hamed.

Fourth and finally, Hamed has objected to having to file ANY of the pre-2012 accounting claims now for a variety of reasons – or being estopped from making subsequent pre-2012 claims. **Hamed is not in any way estopped from filing claims as to that period until Yusuf supplies the accounting that is mandated by the Court's Winding Up Order and RUPA.** As Hamed (also) stated in his September 30, 2016 Objections:

Plaintiff objects to having to detail all “partnership claims” from 1986 to 2012, *at this time*, for the following reasons:

- i. As a *sine qua non* of final distribution of the remaining assets in dissolution, RUPA¹ first requires an accounting to which contests are then made. There has been no 1986-2012 accounting done yet. Thus, there has been no analysis of the value of the partnership shares with itemized statements of contributions, distribution and claims to which Hamed can respond. **It is improper to make the non-accounting partner respond first or even simultaneously;**
- ii. Discovery was halted by the Order of this Court before the Plaintiff could complete discovery on the 1986-2012 claims;
- iii. No notice was previously given that the 1986-2012 claims would have to be submitted at this time, prior to a partnership accounting – as Hamed was simply required to respond to the post-2012 accounting that has been submitted or that the Master would be involved in those claims;²

Any one of these four reasons is sufficient for denying the Motion to Strike.

¹ *Revised Uniform Partnership Act* (“RUPA”) as enacted at 26 V.I.C. §§ 1 *et seq.*

² Indeed, *Step 4* of the Court's *Winding Up Order* (cited above) explicitly limited Hamed's ability to address this 2012-present time period, stating “Hamed's accountant shall be allowed to view all partnership accounting information **from January 2012 to present** and submit his findings to the Master.” (Emphasis added.)

III. Yusuf asserts there is no merit to Hamed's Supplemental Claims

The argument that there is no merit to the Plaintiff's supplemental claims here is not proper in a motion to strike – as Yusuf is simply making substantive responses to the Notice – which **must** be reserved for claims process, like all other claims. Thus, they will not be addressed here. However, Hamed notes that they are based on *admissions* made by Yusuf in his September 30th filing, so it is hard to imagine why he now tries to assert they are without merit.

IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that the Motion to Strike the Plaintiff's additional claims should be denied.

Dated: October 25, 2016



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross

Special Master

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