

**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 RESPONSE TO YUSUF'S SUPPLEMENTAL SOL ARGUMENT IN
OPPOSITION TO HAMED'S PARTIAL RULE 56 MOTION**

The Plaintiff hereby responds to the SOL issue as it relates to his Rule 56 motion for partial summary judgment on this issue. For the reasons set forth herein, it is respectfully submitted that a six-year SOL applies to the claims raised in this case.

I. The applicable statute of limitations

Because the Plaintiff has briefed this issue several times, those arguments will not be repeated again. Instead, the Plaintiff will rely on his past filings, summarized in a

portion of his July 20, 2014, filing, with the relevant excerpt attached hereto as **Exhibit 1**. However, several additional comments are needed to address Yusuf's SOL filing.

First, while Yusuf argues that his rights against his partner are governed by the common law, requiring a *Banks* analysis, the Virgin Islands first adopted the UPA and then replaced it with RUPA, codifying each in Title 26 of the Virgin Islands Code. Those statutory sections address the rights and obligations of partners. Section 75 of Title 26 then outlines how partners can seek relief, including an accounting, from each other. Thus, no *Banks* analysis is needed, as the common law has been replaced by a statute.¹

Second, the language of 26 V.I.C. § 75(c) governs the issue before this Court:

(c) A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Multiple courts have addressed this clear wording and adopted it. See, e.g. *Fike v. Ruger*, 754 A.2d 254, 264 (Del.Ch.1999), *aff'd* 752 A.2d 112 (Del. 2000) ("a right of action arising during the partnership is not revived merely because a dissolution occurs and a separate right to an accounting on dissolution arises"). While Yusuf argues *Fike* was wrong, other courts in RUPA jurisdictions have followed this holding.² In short, *Fike* is good, well respected-law, despite Yusuf's arguments to the contrary.

¹ 26 V.I.C. § 273(b) explicitly provides that "(b) After January 1, 2000, this chapter [RUPA] governs all partnerships."

² See, *Ruggerio v. Estate of Poppiti*, CIV.A. 18961-NC, 2005 WL 517967 (Del. Ch. Feb. 23, 2005) and *Baghdady v. Baghdady*, 2008 WL 4630487 (D. Conn. Oct. 17, 2008) (quoting *Fike*), discussed in detail in **Exhibit 1**. In fact, *Fike* was cited with **approval again recently** in *Calderoni v Senese*, 2014 WL 7530169 at *4 (Super Conn. 2014).

Indeed, *Fike* is not really controversial, **as it simply follows the unambiguous wording of the same RUPA statute adopted in the Virgin Islands.**³ Thus, it is clear that partnership liability is created by statute in this jurisdiction so that the claims being asserted by either partner in this case are subject to the 6-year statute of limitations pursuant to 5 V.I.C. § 31(3) -- which expressly applies to liabilities created by statute, as well as debt claims. Moreover, 5 V.I.C. § 32 (a) would not change this result, as it simply says an equitable cause of action is still governed by the same rules set forth "in this chapter," which in this case is §31(3), as noted.

II. The RUPA savings clause

As for Yusuf's argument that 26 V.I.C. § 274 gives him the right to an accounting for the time period prior to the V.I. Legislature's adoption of RUPA in 1998, Yusuf misreads the statute, which succinctly reads:

This Chapter does not affect an action or proceeding commenced or right accrued before this Chapter takes effect.

That language simply preserves an existing action or right that had already accrued prior to 1998. The Official Comment to RUPA explicitly anticipated and addressed Yusuf's argument here (See **Exhibit 2**):

Although it is not always clear whether a right has "accrued," the term generally means that a cause of action has matured and is ripe for legal redress. An inchoate right is not enough, and thus, for example, there is no accrued right under a contract until it is breached. (Citations omitted).

In short, as the Yusuf/Hamed partnership did not dissolve prior to 1998, no right to an **accounting on dissolution** had yet accrued, much less existed, prior to that date.

³ As for the cases and other authorities to the contrary cited by Yusuf in his March 21, 2017, filing, which are primarily pre-RUPA and non-RUPA citations, these were also previously addressed by the Plaintiff, so no new response is needed. See **Exhibit 1**.

III. What the application of the SOL means for this case

Once this Court grants partial summary judgment that the 6-year SOL is applicable, then many of the claims in this case become stale. For example, at the March 6th hearing, Wally Hamed explained that various claims on Yusuf's list of claims (Hearing Ex. 23) were known to exist prior to 2002 to Yusuf (Hearing Tr. 106 to 115), which requires exclusion under the SOL, which he specifically identified at the hearing, marked as Hearing Exhibits 24, 25, 26, 27 and 28. He then summarized this total amount now barred by the SOL in Hearing Ex. 29 (see Group **Exhibit 3**), covering specific, identifiable claims **allegedly owed United by the partnership** for claims prior to 2002 (gross receipts, black book balances, ledger balances, water revenues and unreimbursed transfers).

David Jackson then testified to an additional list of items in the BDO report that would be barred based on Hamed's testimony about Yusuf's knowledge of the partnership books (Hearing Tr. 201-204), which he summarized pursuant to Rule 1006 on Hearing Ex. 36, also attached as part of Group **Exhibit 3**. Neither the testimony of Hamed nor Jackson was disputed by any testimony or evidentiary submissions on these claims (as identified in the referenced six exhibits).

On the other hand, **any claim Yusuf asserts he did not 'discover' prior to the SOL period can still be pursued after the entry of the partial summary judgment.** At this juncture, the only such claim specifically identified by Yusuf is his claim against Wally Hamed for the 1992 and 1993 taxes, **which requires a jury to determine the veracity of his claim that he did not "discover" this alleged claim until 2010.** See, *United Corporation v. Waheed Hamed*, 2016 WL 154893, at *7 (Jan. 12, 2016).

IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that a six-year SOL applies to the claims raised in this case, barring all claims before September 17, 2006 absent the application of the discovery exception to the running of the SOL. This ruling will significantly streamline the remaining issues, as noted, as discovery proceeds.

Dated: March 27, 2017



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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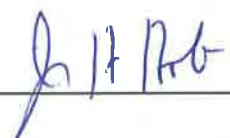


EXHIBIT 1

**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

**PLAINTIFF HAMED'S REPLY RE HIS MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO THE STATUTE OF LIMITATIONS**

Plaintiff has moved pursuant to Fed. R. Civ. P. 56 to bar all monetary damage claims that pre-date September 16, 2006, based on the applicable statute of limitations. This motion is relevant now, as it will eliminate the tremendous cost and time delays that will otherwise be encountered in sorting out these claims. Before responding to Defendants' arguments, several preliminary comments are in order.

First, Defendants argue that Plaintiff's summary judgment motion is procedurally defective because there was no Rule 56.1 *Statement of Facts* filed with the motion. However, the motion identifies specific counts in the Amended Counterclaim and then seeks to bar any pre-September 16, 2006 damage claims raised by those counts as a

there is no fraud claim alleged in the First Amended Counterclaim. Thus, this Court need not consider the statute of limitations regarding fraud or the application of 5 V.I.C. §32(e) to such claims.

With these comments in mind, Plaintiff will now address the three separate legal issues that remain—accounting, rent and tolling. For the reasons set forth herein, it is respectfully submitted that the relief sought should be granted, barring pre-2006 monetary damage claims being asserted in this case.

I. Count IV-The "Accounting" Claims

The issue presented as to the accounting claims is whether the *Revised Uniform Partnership Act* ("RUPA", as codified in Title 26) bars "claims" based on matters that occurred prior to 2006--a pure question of law. While there is one unpublished post-RUPA case that *appears* on its face to have been decided the other way (cited by Defendants), this turns out not to be the case, and it is respectfully submitted that the proper view is the one stated by the drafters of Section 405 of RUPA (now codified in 26 V.I.C. §75(c)), that the statute of limitations on monetary damage claims begins to run when they occur, and are not "revived" by an accounting when the partnership is dissolved.

Defendants cite an A.L.R. 4th article that provides the correct formulation of the prior law -- the *UPA* as it was before the RUPA was enacted. Then, matters between the partners could only be litigated at the time of accounting, and so that is when the statute of limitations began to run. However, the old UPA was *expressly and*

intentionally changed when it was revised to become the RUPA.³ Thus, when this provision was revised, the authors specifically noted that the entire point of the revision was to compel partners to litigate their claims during the life of the partnership or risk losing them. The official NCCUSL *Commentary* to Section 405(c) [now codified in the VI at 26 V.I.C. §75] states:

4. Section 405(c) replaces UPA Section 43 and provides that other (i.e., non-partnership) law *governs the accrual of a cause of action for which subsection (b) provides a remedy*. The statute of limitations on such claims is also governed by other law, and *claims barred by a statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution, as they were under the UPA. The effect of those rules is to compel partners to litigate their claims during the life of the partnership* or risk losing them. . . .(Emphasis added).

See **Exhibit 1 attached**. In short, under that older version, a cause of action between partners *could not be brought sounding in partnership* until there was an accounting. Under the new law, partners can sue each other at any time regardless of requesting an accounting, and any claims not timely filed are barred by the statute of limitations. The Legislature enacted 26 V.I.C. §75(c) 1998 – which expressly states in relevant part:

(c) A right to an accounting upon a dissolution and winding up **does not revive** a claim barred by law. (Emphasis added).

If the old UPA and new RUPA are not confused, there is no dispute. The new statutory language (as explained by the official commentary) is clear: Claims not asserted before the applicable statute of limitations are not revived by the post-dissolution accounting.

The language of the V.I. statute was adopted verbatim from §405 of RUPA, which other states have also adopted. Since RUPA was enacted, several states have

³ The *National Conference of Commissioners on Uniform State Laws* ("NCCUSL") maintains a copy of the uniform version of the RUPA with the Official Commentary at www.uniformlaws.org/shared/docs/partnership/upa_final_97.pdf. The specific sections referenced herein are attached as **Exhibit 1**.

addressed this exact issue. In *Fike v. Ruger*, 754 A.2d 254, 264 (Del.Ch.1999), *aff'd* 752 A.2d 112 (Del. 2000) the Delaware Chancery Court held:

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).

While Defendants argue that the Delaware Chancery Court (in *Fike*) "got it wrong"--- and that *Fike* is *not the law in Delaware*---they are incorrect.⁴ *Fike* is still good law, and is still controlling in Delaware long after the appeal discussed by Defendants. In fact, *Fike* was followed in Delaware by the Chancery Court several years later, in 2005, on this identical issue -- in *Ruggerio v. Estate of Poppiti*, No. Civ.A. 18961-NC, 2005 WL 517967, at *4 (Del. Ch. Feb. 23, 2005) (money damages raised in post-RUPA accounting are subject to the statute of limitations which begins to run when the damage occurred). *Ruggerio* held:

Where the relief sought from an accounting is merely the recovery of money, the case is analogous to an action for monetary damages. In such cases, the court applies the equivalent statute of limitations by analogy. The statute of limitations for a breach of fiduciary duty is three years. In addition, "[a] right to an accounting ... does not revive a claim barred by law. (footnotes omitted)(citing *Fike v. Ruger*, 754 A.2d 254, 264 (Del. Ch.1999) (quoting the *Revised Uniform Partnership Act* § 405(c) (1996) to interpret 6 *Del. C.* §§ 1521-22).

Id. (emphasis added). In *Fike*, the court went through a full and careful analysis of the revision of RUPA Section 405(c) (called "DUPL" in Delaware) and at 754 A.2d 254 held:

⁴ With all due deference to Defendants' wisdom as to Delaware law, the Delaware Chancery Court -- and particularly then Vice-Chancellor Lamb -- do not get Delaware Corporation Law that wrong. The Delaware Supreme Court *absolutely did not reverse the Fike court on this issue*, as Defendants attempt to suggest.

[P]laintiffs seek to avoid the statute of limitations or laches defense by characterizing their claims as ones for a settlement of partnership accounts upon dissolution. . . . At common law, the general rule was that actions for accounting should be brought post-dissolution.

Id. at 262-63 (footnotes and citations omitted)(emphasis added). The court then explained why this old rule was changed by RUPA:

Because the common law rule placed partners in the predicament of either causing a dissolution to resolve disputes or continuing the partnership despite a cloud of conflict and uncertainty hanging over it, the drafters of the Uniform Partnership Act ("UPA") included Section 22, specifically authorizing accounting actions **prior to dissolution**.

Id. at 262-63. Once this concept changed, allowing suits between partners, the court then noted:

It would seem a natural development that, **once such actions were permitted, they should be regarded as "accruing" for purposes of statutes of limitations at the time of their occurrence, even in the context of partnerships subject to dissolution by a partner's withdrawal. That position was not universally adopted by courts interpreting the UPA, but it has now been codified in § 405(c) of the Revised Uniform Partnership Act ("RUPA"), which states that "[t]he 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."**

Id. at 263-64 (first emphasis added). As the court concluded:

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.

Id. at 264 (emphasis added). As noted in Plaintiff's moving papers, the same result was reached in *Baghdady v. Baghdady*, 2008 WL 4630487 (D. Conn. Oct. 17, 2008).

Defendants attempt to support their alternative interpretation with cases from other RUPA jurisdictions that are inapposite such as *Laue v. Estate of Elder*, 25 P.3d

1032, 1038, 2001 WL 647833 (2001).⁵ Their discussion of that case is almost exactly backwards from what the decision actually held. The Court banned the claim because it was barred by the statute of limitations where the accounting itself (not a money damages claim within the accounting) was not sought until more than three years after dissolution -- a totally different matter. *Id.* at 1038, stating in part:

Laue's final cause of action, added in his amended complaint, alleges that he is entitled to a partnership distribution by virtue of his partnership with Elder. . . .But even if his amended complaint was not properly dismissed on procedural grounds, **we nevertheless conclude Laue's claim for a partnership distribution fails because it is barred by the statute of limitations. . . .**

The statutory period does not begin to run until dissolution or the exclusion of the complaining partner from participating in the affairs of the partnership. In this case the evidence establishes that Elder excluded Laue from Top Kat Auto Sales no later than March, 1994. Thus, **Laue's right to an action for accounting and distribution of partnership assets is barred unless commenced by March, 1997.** (citations omitted) (emphasis added).

In their analysis, Defendants cite a 1980's-era (pre-RUPA) A.L.R. 4th article and argue that a *Banks/Conner* analysis supports their view -- asserting that the article cites over 20 jurisdictions that have adopted Defendants' view. That claim falls apart once the article is digested, as all of the cases cited predate the enactment of RUPA except for 8 cases listed in an updated *Supplement*.⁶

⁵ Similarly, Defendants rely on *Smith v. Graner*, 2010 Minn. App. Unpublished. LEXIS 717 (Minn. App. 2010). It is an unreported Minnesota case which has never been cited, followed or even discussed subsequently. It is based on a decidedly non-uniform 1889 Minnesota common law case that relies completely on the pre-RUPA formulation.

⁶ The A.L.R. 4th article lists these cases in Section 3 as well as in the *Supplement* to that section. It can be provided if requested.

Of those eight post-RUPA dated cases listed in the *Supplement*, six of the cited decisions were from non-RUPA jurisdictions (New York and Massachusetts), and relied on provisions of the old UPA that have been explicitly changed in the RUPA.⁷ Of the two remaining cases, *La Canada Hills Ltd. P'ship v. Kite*, 217 Ariz. 126, 171 P.3d 195, 512 Ariz. Adv. Rep. 8, 2007 WL 2584777 (Ct. App. 2007) was not decided based on RUPA, as Arizona has an unique limitations statute that specifies the partnership limitations do not run until "cessation of dealings." In *Boulle v. Boulle*, 160 S.W.3d 167, 174, 2005 WL 435102 (Tex. App. 2005) the court ruled on an entirely different basis -- noting that although the statute of limitations is a question of law for determination by the court, the matters were not sufficiently before the court to allow it to decide the issue. Thus, all eight post-RUPA cases cited in the A.L.R. 4th article are easily distinguishable.

More importantly, the language in 25 V.I.C. §75(c) is clear, in full harmony with the drafter's comments and all supporting decisions that specifically address this new RUPA language. Thus, common law based on the old, expressly changed law would mean nothing in any case. As such, summary judgment is warranted as to this legal question, barring monetary accounting and third-party claims that pre-date 2006 in this case.⁸

⁷ **Exhibit 2** contains the index of jurisdictions that have adopted RUPA. The fact that New York has not adopted RUPA (See **Exhibit 1**) also distinguishes the holding in *Sriraman v. Shashikant Patel*, 761 F.Supp. 2d 7 (E.D.N.Y. 2011) cited by Defendants on p. 5 of their *Opposition*, as it is not based on the RUPA either.

⁸ This result works both ways, as eliminating these claims also benefits Yusuf, does not deny that he lost in excess of \$18 million in 'options trading' using Plaza Extra funds after being told to stop trading by Plaintiff in the 1990's. See **Exhibit 2** at pp. 217-218. Under the old UPA, this claim was not ripe until dissolution, but is now barred by RUPA.

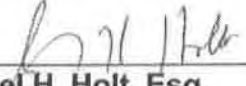
Thus, as these acts all took place before 2006, without any allegation that they continued, they are time barred by the applicable statute of limitations, requiring dismissal.

V. Summary

Proper dismissal of the untimely claims will save countless hours and expense. These pre-2006 monetary damage accounting and third-party claims must be excluded pursuant to the applicable statute of limitations.¹⁵

For the reasons set forth herein, it is respectfully submitted that the relief sought should be granted, with an order entered barring all damage claims that pre-date September 16, 2006, as being time barred pursuant to the statute of limitations applicable to these claims. By addressing this issue now, the remaining discovery in this case can be streamlined so it can proceed to trial as scheduled without further delays.

Dated: June 20, 2014



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¹⁵ The Amended Counterclaim also fails to identify any *specific* pre-2006 "accounting" or "conversion" claims (as opposed to specificity in United's rent claim). Plaintiff has sought this information in discovery to no avail. The answer why any specific information is not forthcoming is simple—Defendants cannot detail any such claims, but are instead hoping to manufacture them in an expensive fishing expedition going through the hundreds of boxes of these same documents from the government. Of course, as Fathi Yusuf admits, he was always in control of the company's business records and accounting, so he knows he is manufacturing these offsets.

EXHIBIT 1



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

<http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Partnership Act>

Enactments Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming

Text of Act and Comments

http://www.uniformlaws.org/shared/docs/partnership/upa_final_97.pdf at § 405 (pp. 72-73)

SECTION 405. ACTIONS BY PARTNERSHIP AND PARTNERS.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (1) enforce the partner's rights under the partnership agreement;
- (2) enforce the partner's rights under this [Act], including:
 - (i) the partner's rights under Sections 401, 403, or 404;
 - (ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 701 or enforce any other right under [Article] 6 or 7; or
 - (iii) the partner's right to compel a dissolution and winding up of the partnership business under Section 801 or enforce any other right under [Article] 8; or
- (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(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.

Comment

1. Section 405(a) is new and reflects the entity theory of partnership. It provides that the partnership itself may maintain an action against a partner for any breach of the partnership agreement or for the violation of any duty owed to the partnership, such as a breach of fiduciary duty.




2. Section 405(b) is the successor to UPA Section 22, but with significant changes. At common law, an accounting was generally not available before dissolution. That was modified by UPA Section 22 which specifies certain circumstances in which an accounting action is available without requiring a partner to dissolve the partnership. Section 405(b) goes far beyond the UPA rule. It provides that, during the term of the partnership, partners may maintain a variety of legal or equitable actions, including an action for an accounting, as well as a final action for an accounting upon dissolution and winding up. It reflects a new policy choice that partners should have access to the courts during the term of the partnership to resolve claims against the partnership and the other partners, leaving broad judicial discretion to fashion appropriate remedies.

Under RUPA, an accounting is not a prerequisite to the availability of the other remedies a partner may have against the partnership or the other partners. That change reflects the increased willingness courts have shown to grant relief without the requirement of an accounting, in derogation of the so-called "exclusivity rule." *See, e.g., Farney v. Hauser*, 109 Kan. 75, 79, 198 Pac. 178, 180 (1921) ("[For] all practical purposes a partnership may be considered as a business entity"); *Auld v. Estridge*, 86 Misc. 2d 895, 901, 382 N.Y.S.2d 897, 901 (1976) ("No purpose of justice is served by delaying the resolution here on empty procedural grounds").

Under subsection (b), a partner may bring a direct suit against the partnership or another partner for almost any cause of action arising out of the conduct of the partnership business. That eliminates the present procedural barriers to suits between partners filed independently of an accounting action. In addition to a formal account, the court may grant any other appropriate legal or equitable remedy. Since general partners are not passive investors like limited partners, RUPA does not authorize derivative actions, as does RULPA Section 1001. Subsection (b)(3) makes it clear that a partner may recover against the partnership and the other partners for personal injuries or damage to the property of the partner caused by another partner. *See, e.g., Duffy v. Piazza Construction Co.*, 815 P.2d 267 (Wash. App. 1991); *Smith v. Hensley*, 354 S.W.2d 744 (Ky. App.). One partner's negligence is not imputed to bar another partner's action. *See, e.g., Reeves v. Harmon*, 475 P.2d 400 (Okla. 1970); *Eagle Star Ins. Co. v. Bean*, 134 F.2d 755 (9th Cir. 1943) (fire insurance company not subrogated to claim against partners who negligently caused fire that damaged partnership property).

3. Generally, partners may limit or contract away their Section 405 remedies. They may not, however, eliminate entirely the remedies for breach of those duties that are mandatory under Section 103(b). See Comment 1 to Section 103.

4. Section 405(c) replaces UPA Section 43 and provides that other (i.e., non-partnership) law governs the accrual of a cause of action for which subsection (b) provides a remedy. The statute of limitations on such claims is also governed by other law, and claims barred by a statute of limitations are not revived by reason



of the partner's right to an accounting upon dissolution, as they were under the UPA. The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them. Because an accounting is an equitable proceeding, it may also be barred by laches where there is an undue delay in bringing the action. Under general law, the limitations periods may be tolled by a partner's fraud.



5. UPA Section 39 grants ancillary remedies to a person who rescinds his participation in a partnership because it was fraudulently induced, including the right to a lien on surplus partnership property for the amount of that person's interest in the partnership. RUPA has no counterpart provision to UPA Section 39, and leaves it to the general law of rescission to determine the rights of a person fraudulently induced to invest in a partnership. See Section 104(a).

EXHIBIT 2

UNIFORM PARTNERSHIP ACT (1997)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIFTH YEAR
SAN ANTONIO, TEXAS
JULY 12 - JULY 19, 1996

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Approved by the American Bar Association
San Antonio, Texas, February 4, 1997

2/27/98



SECTION 1207. SAVINGS CLAUSE. This [Act] does not affect an action or proceeding commenced or right accrued before this [Act] takes effect.

Comment

This section continues the prior law after the effective date of the Act with respect to a pending action or proceeding or a right accrued at the time of the effective date. Since courts generally apply the law that exists at the time an action is commenced, in many circumstances the new law of this Act would displace the old law, but for this section.

Almost all States have general savings statutes, usually as part of their statutory construction acts. These are often very broad. Compare Uniform Statute and Rule Construction Act § 16(a) (narrow savings clause). As RUPA is remedial, the more limited savings provisions in Section 1207 are more appropriate than the broad savings provisions of the usual general savings clause. *See generally*, Comment to Uniform Statute and Rule Construction Act § 16.

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Pending “action” refers to a judicial proceeding, while “proceeding” is broader and includes administrative proceedings. Although it is not always clear whether a right has “accrued,” the term generally means that a cause of action has matured and is ripe for legal redress. *See, e.g., Estate of Hoover v. Iowa Dept. of Social Services*, 299 Iowa 702, 251 N.W.2d 529 (1977); *Nielsen v. State of Wisconsin*, 258 Wis. 1110, 141 N.W.2d 194 (1966). An inchoate right is not enough, and thus, for example, there is no accrued right under a contract until it is breached.




EXHIBIT 3

**CHART 8 - From Exhibit A to Yusufs' Claims - \$2,228,672.94 in Items
Yusuf Claims that Were Known to Fathi Yusuf Before 2007**

III. Less Debts of the Partnership

Items Yusuf Knew
about Before 2007

F. Reimb. United for Gross Receipts Taxes	\$ 60,586.96	\$ 60,586.96
G. Black Book Balance owed to United	\$ 49,997.00	\$ 49,997.00
H. Ledger Balances owed to United	\$ 199,760.00	\$ 199,760.00
I. Water Revenue Re: Plaza Extra-East	\$ 693,207.46	\$ 693,207.46
J. Unreimbursed Transfers from United	\$ <u>188,132.00</u>	\$ <u>188,132.00</u>
		\$ 1,191,683.42



**FRE Rule 1006 Summary Chart --
Examples of Amounts BDO Claimed Against Hamed, But Which
Fathi Yusuf Knew About Prior to 2007 Based on Partnership Records**

			Amount of Those Claims Fathi Yusuf Knew Prior to 2001 based on P'Ship Records	Amount of Those Claims Fathi Yusuf Knew Prior to 2007 based on P'Ship Records
Category Listed in the BDO Report				
Individual	#	BDO Report		
TOTAL OF ALL 5 HAMEDS =			\$5,432,286.14	\$285,605.20
Mohammad Hamed	1	p.24 Table 2A—Withdrawals from Pship thru tickets/receipts (1994-09/2001)	\$848,718.00	0
	2	p.24 Table 2B—Withdrawals from Pship Thru tickets/receipts (10/2001-2012)	0	\$5,000.00
	3	p.25 Amounts Ascribed to Certified Checks which were not Withdrawals	\$62,000.00	0
Sub-Total			<u>\$910,718.00</u>	<u>\$5,000.00</u>
Wally Hamed	4	p.27 Table 7A—Funds withdrawn from Pship thru Checks (1994-09/2001)	\$451,500.00	0
	5	p.28 Table 8A—Withdrawals from Pship thru tickets/receipts (1994-9/2001)	\$859,615.75	0
	6	p.29 Table 9A—Payments to Third Parties with Partnership funds (1994-9/2001)	\$713,146.46	0
	7	p.30 Table 11A—Withdrawn with Cashler's Checks (1994-09/2001) Y.Jaber Cks in Safe	\$285,000.00	0
	8	p.31 French Bank Acct checks (not signed or cashed)	\$75,000.00	0
Sub-Total			<u>\$2,384,262.21</u>	<u>\$0.00</u>
Willie Hamed	9	p.33 Table 15A—Funds withdrawn from Pship thru Checks (1994-09/2001)	\$50,000.00	0
	10	p.33 Table 15B—Funds withdrawn from Pship thru Checks (2002-2012)	0	\$22,400.44
	11	p.33 Table 16A—Withdrawals from Pship thru tickets/receipts (1994-09/2001)	\$1,281,122.00	0
	12	p.33 Table 16B—Withdrawals from Pship Thru tickets/receipts (10/2001-2012)	0	\$26,500.00
	13	p.33 Table 17A—Payments to 3 rd Parties w/Pship funds (1994-2001)	\$526,333.36	0
	14	p.33 Table 17B – Payments to 3 rd Parties w/Pship funds (10/2001-2012)	0	\$2,665.45
Sub-Total			<u>\$1,857,455.36</u>	<u>\$51,565.89</u>
Mafi Hamed	15	p.36 Table 24A—Withdrawals from Pship thru tickets/receipts (1994-9/2001)	\$168,163.07	0
	16	p.36 Table 24B—Withdrawals from Pship thru tickets/receipts (10/2001-2012)	0	\$188,903.31
	17	p.37 Table 25A—Payments to Third Parties with Partnership funds (1994-9/2001)	\$3,987.50	0
	18	p.37 Table 25B—Payments to Third Parties with Partnership funds (10/2001-2012)	0	\$5,636.00
Sub-Total			<u>\$172,150.57</u>	<u>\$194,539.31</u>
Shawn Hamed	19	p.39 Table 29A—Withdrawals from Pship thru tickets/receipts (1994-09/2001)	\$102,000.00	0
	20	p.39 Table 29B—Withdrawals from Pship Thru tickets/receipts (10/2001-2012)	0	\$34,500.00
	21	na PNC Bank Check Ascribed to Shawn Hamed but not His	\$2,800.00	0
	22	na PNC Bank Check Ascribed to Shawn Hamed but not His	\$2,900.00	0
Sub-Total			<u>\$107,700.00</u>	<u>\$34,500.00</u>