

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED BY HIS AUTH. AGENT WALEED HAMED **Plaintiff** )  
)  
)  
)  
vs )  
)  
FATHI YUSUF )  
UNITED CORPORATION )

CASE NO. SX-12-CV-0000370

ACTION FOR: DAMAGES - CIVIL

**Defendant**

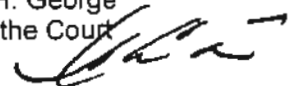
**NOTICE OF ENTRY OF  
MEMORANDUM OPINIONS  
AND ORDERS**

TO: SUPERIOR COURT JUDGES AND MAGISTRATES  
✓ JOEL HOLT, ESQ.; CARL HARTMANN III, ESQ.  
GREGORY HODGES, ESQ.; MARK ECKARD, ESQ.  
JEFFREY MOORHEAD, ESQ.  
HON. EDGAR D. ROSS  
LAW CLERKS, LAW LIBRARY, IT, RECORD BOOK

Please take notice that on July 24, 2017 a(n) MEMORANDUM OPINIONS AND ORDERS dated July 21, 2017 was entered by the Clerk in the above-entitled matter.

Dated: July 24, 2017

Estrella H. George  
Clerk of the Court



IRIS D. CINTRON  
COURT CLERK II

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

WALEED HAMED, as Executor of the Estate of MOHAMMED HAMED Plaintiff/Counterclaim Defendant,	)	
v.	)	Civil No. SX-12-CV-370
FATHI YUSUF and UNITED CORPORATION, Defendants/Counterclaimants,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, and PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING
v.	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC., Counterclaim Defendants.	)	
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WALEED HAMED, as Executor of the Estate of MOHAMMED HAMED, Plaintiff,	)	Civil No. SX-14-CV-287
v.	)	ACTION FOR DAMAGES and DECLARATORY JUDGMENT
UNITED CORPORATION, Defendant.	)	
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WALEED HAMED, as Executor of the Estate of MOHAMMED HAMED, Plaintiff,	)	Civil No. SX-14-CV-278
v.	)	ACTION FOR DEBT and CONVERSION
FATHI YUSUF, Defendant.	)	

**ORDER DENYING MOTION TO TERMINATE THE ROLE OF THE SPECIAL MASTER**

This matter is before the Court on Hamed’s Motion to Terminate the Role of the Special Master, filed March 15, 2017; Defendants’ Opposition, filed April 3, 2017; Hamed’s Reply, filed April 6, 2017, and Hamed’s Supplementation of the Record, filed May 11, 2017. For the reasons that follow, the Court will deny Hamed’s Motion.

Hamed states that because the Master’s “role was for the specific purpose of supervising the dissolution, not to subsequently resolve the claims between the parties. ... this Court should now declare that job complete and terminate the Special Master’s role.” Motion, at 1. Further, Hamed argues that even if the Master’s role under the Final Wind Up Plan is not deemed concluded, nonetheless “his involvement should be curtailed at this time for the sake of preserving the integrity of the process.” *Id.* at 6. Hamed points to “frustration” that has arisen from the Master’s inability to have the Liquidating Partner’s accountant provide information in the time and form sought, resulting in “tension” between

counsel and the Master. Without presentation of supporting facts or reference to any legal standard or authority, Hamed cites the “extent of contact and familiarity between the Special Master and the Liquidating Partner,” suggesting that “it would create an appearance of impropriety for the Special Master to now rule on the claims presented by Fathi Yusuf.” *Id.*

Hamed’s contention that the Master’s role has concluded is misguided. The Master was appointed “to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner.” Plan § 2. The Liquidating Partner “has the exclusive right and obligation to wind up the Partnership according to this Plan and the provisions of V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master.” *Id.* § 3. Section 173(c) describes the winding up process to include actions to

...settle and close the partnership’s business, dispose of and transfer the partnership’s property, discharge the partnership’s liabilities, distribute the assets of the partnership pursuant to section 177 of this chapter, settle disputes by mediation or arbitration, and perform other necessary acts.

In turn, Section 177 provides:

- (a) In winding up a partnership’s business, the assets of the partnership... must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.
- (b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business...

While the closure of the partnership’s business and disposition and transfer of partnership property has occurred, certain aspects of the wind up including the discharge of obligations to creditors, including partner creditors, and the distribution of surplus to partners as contemplated by the Plan and by the applicable statutory scheme remain incomplete. The role of the Master specifically includes the receipt and review of the partners’ respective proposed accounting and distribution plans. “Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination.” Plan § 9, Step 6. While the Master will not “be in a position of deciding claims” (Reply, at 5), by the plain language of the Plan, the Master will report to the Court with recommendations concerning each partner’s proposed accounting and distribution plan for final determination by the Court. As such, the role of the Master has yet to be completed, and the appointment of the Master is not subject to termination for the reason that the purposes of his appointment have been accomplished.

Hamed's second argument is no more persuasive. He concedes that he "has not argued that Judge Ross has violated any order or other rule." Reply, at 4. Yet, he cites "the taint of potential prejudice," arising from the fact that the Master has spent significantly more time with Liquidating Partner Yusuf, than he has with Hamed and his counsel, such that "it would create an appearance of impropriety for the Special Master to now rule on the claims presented by Fathi Yusuf." Motion, at 6.

Virgin Islands Rule of Civil Procedure 53(a) governs the appointment and disqualification of masters. V.I. R. Civ. P. 53(a)(2) provides:

Disqualification. A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 4 V.I.C. § 284, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

In turn, 4 V.I.C. § 284 provides:

Disqualifications of judge.

No judge or justice shall sit or act as such in any action or proceeding:

- (1) To which he is a party or in which he is primarily interested;
- (2) When he is related to either party, or to an officer of a corporation which is a party, by blood or marriage within the third degree;
- (3) When in the action or proceeding or in any prior action or proceeding involving the same issues, he has been of counsel for any party to the action or proceeding; or
- (4) When it is made to appear probable that, by reason of bias or prejudice of such judge, a fair and impartial trial cannot be had before him.

Pursuant to the parties' stipulation, the Court appointed as Master the Honorable Edgar D. Ross, a seasoned jurist with a renowned history of exemplary service in all three branches of the Government of the Virgin Islands over several decades. Judge Ross has disclosed no grounds for disqualification to the parties or the Court. In his Motion to "terminate the role of the Special Master," Hamed cites no authority and claims no relationship that violates V.I. R. Civ. P. 53(a)(2) or that disqualification is proper pursuant to any subsection of 4 V.I.C. § 28. Subsection 4, the only conceivable provision of the statute that could apply, does not provide grounds for the removal of the Master as, from Hamed's arguments, "it is not made to appear probable that, by reason of bias or prejudice" the Master will be unable to fairly and impartially discharge the duties of the position to which he has been appointed in this litigation.


Defendants cite *Jackson v. Local Union 542, Int'l Union of Operating Eng'rs*, 155 F. Supp. 2d 332 (E.D. Pa. 2001) as instructive. There the plaintiffs sought the Special Master's removal or a clarification of his role, asserting bias because of an undefined "ongoing financial relationship" with the defendant, which the court concluded was the defendant's court-ordered obligation to pay the Special Master's costs, and deemed "wholly unsupportable and frivolous." 155 F. Supp. 2d at 335. As here, the plaintiffs failed to "cite any statute, opinion, professional standard or other legal ground upon which they seek his removal." *Id.* The plaintiffs offered no evidence of alleged bias or facts that might conceivably support an inference of prejudice apart from the fact that the Special Master had never ruled against the defendant, which the plaintiffs perceived as being "somehow evidence of sufficient bias to preclude him from continuing to aid the court in adjudicating Plaintiffs' claims." *Id.* Noting the "hundreds of hours" the Special Master had spent satisfactorily resolving the parties' disputes, and that each party had been subjected to the Special Master's services with rights to appeal adverse rulings, the court denied the plaintiffs' motion for removal as "baseless." *Id.* at 336.

Here, as Hamed notes, Judge Ross has spent a substantial amount of time overseeing the closure of the partnership's businesses and the distribution and sale of each of the three stores in liquidation. The Master's service to the parties and to the Court up to this point has been of great value, and the Court finds no basis in Hamed's Motion for the removal or termination of the Master. Accordingly, the Motion will be denied.

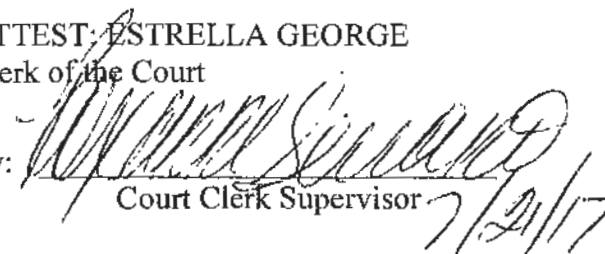
Based upon the foregoing, it is hereby

ORDERED that Hamed's Motion to Terminate the Role of the Special Master is DENIED.

DATED: July 21, 2017.

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE  
Clerk of the Court

By:   
Court Clerk Supervisor 7/21/17

CERTIFIED A TRUE COPY

DATE: July 24, 2017  
ESTRELLA H. GEORGE  
ACTING CLERK OF THE COURT

BY:   
COURT CLERK