

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

WALEED HAMED, WAHEED HAMED,)
MUFEEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)

Additional Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

CIVIL NO. SX-12-CV-370

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
PARTNERSHIP DISSOLUTION,
WIND UP, AND ACCOUNTING**

Consolidated With

CIVIL NO. SX-14-CV-287

**ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT**

CIVIL NO. SX-14-CV-278

**ACTION FOR DEBT AND
CONVERSION**

**FATHI YUSUF'S REPLY BRIEF IN SUPPORT OF HIS MOTION FOR
CERTIFICATION FOR IMMEDIATE APPELLATE REVIEW**

Plaintiff's Response to Yusuf's Motion for Certification argues that the issues for which Yusuf seeks certification do not involve controlling questions of law because the Court's July 24

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Order dismissing more than half of Plaintiff's accounting claim was not a "summary judgment." Instead, Plaintiff claims that the Order dismissing Yusuf's accounting claims for the period January 1, 1994 to September 17, 2006 was an exercise of the Court's broad equitable powers involving no questions of law. Plaintiff's Brief at p. 2.

Whatever label is used to characterize the Court's ruling, it is plain that there are important legal questions implicated by it. These include the procedural issue of whether the Court acted properly in issuing a dispositive ruling on a *sua sponte* ground, without giving notice to Yusuf and an opportunity to brief and present evidence on the applicability of laches as a basis for dismissing a large part of his accounting claim. They also included the substantive legal issue of whether the doctrine of laches can ever be a ground for dismissing part of an accounting claim, especially where the Court has specifically ruled that the statute of limitations did not bar the claim. And the substantive issue of whether the Court's findings of undue delay by Yusuf were based on insufficient evidence, and thus clearly erroneous, and whether the Court erred in failing to even address, let alone find, prejudice to Hamed.

Plaintiff's conclusory suggestion that these procedural and substantive legal issues disappear because the Court was exercising its broad equitable powers are unsupported by logic or by any case law. To the extent that this Court agrees with Plaintiff, then Yusuf submits the Court should simply replace the phrase "deciding a motion for partial summary judgment" in issues 1 and 2 with the phrase "dismissing part of Yusuf's accounting claim." That would enable the Supreme Court to determine whether the errors claimed by Yusuf in dismissing most of his accounting claim are excused because the Court was exercising its equitable powers.

Next, Plaintiff argues that there are no economies to be gained by having the Virgin Islands Supreme Court determine now, on an expedited basis, whether Yusuf's accounting claim will be

dismissed to the extent it covers transactions from January 1, 1994 to September 17, 2006, or whether Yusuf will be entitled to prove his entire accounting claim. Plaintiff's Brief at 2. It obviously will be in the interests of economy for the accounting claim to be litigated once, not twice. Discovery is to be undertaken on the claim before its initial resolution by the Master, and to schedule depositions and written discovery twice is clearly a waste of the parties' and the Court's resources. Having the Master read briefs and take testimony on two occasions, rather than one, also creates substantial diseconomies.

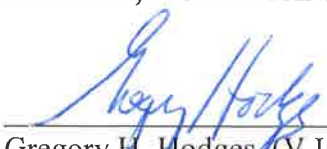
Plaintiff also suggests that he "may" appeal some of the rulings in this case, including the Court's ruling on his jury demand and the Daubert rulings. Plaintiff's Brief at 2. The "may" is significant here and suggests that Plaintiff can live with all of the other rulings if the limitation on the accounting claims stands. But if Plaintiff is genuinely desirous of appealing any issues, he can ask as alternative relief that the Court certify other issues for appeal.

Respectfully submitted,

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DATED: September 5, 2017

By:



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CERTIFICATE OF SERVICE

It is hereby certified that on this 5th day of September, 2017, I served a true and correct copy of the foregoing **FATHI YUSUF'S REPLY BRIEF IN SUPPORT OF MOTION FOR CERTIFICATION FOR IMMEDIATE APPELLATE REVIEW**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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