

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

MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

Case No.: SX-2014-CV-287

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

MOTION TO PRECLUDE YUSUF'S CLAIMS PRIOR TO SEPTEMBER 17, 2006

Judge Brady made it clear that claims prior to September 17, 2006, are barred **regardless of whether the claims are described as “disputed” or “undisputed” by Yusuf**, stating (See p. 33 excerpt from July 24, 2017 Brady Order, attached as **Exhibit 1**):

Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.

The Court then further clarified this directive in footnote 35 at the end of this sentence, making it clear it applied to all claims prior to this date, even those that were allegedly “undisputed”:

Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that “if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary.” First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.


Despite this clear directive, Yusuf repeatedly and improperly still attempts to reintroduce such claims using various “tricks” to avoid that date.

For example, Yusuf had BDO include a claim that admittedly pre-dated 2001 as part of the revised BDO report. See “Item #1” on **Exhibit 2**. Again, this claim is barred by Judge Brady's July 17, 2017, order, as it predates September 17, 2006.¹

¹ This “pre-2001” claim is also the subject of a motion to strike the “revised” BDO report.

As such, this claim should be stricken. **Additionally, Yusuf should be instructed (again) not to re-assert any such pre-September 17, 2006, claims.**

Dated: December 27, 2017



Joel H. Holt, Esq. Bar #6
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi.plaza@gmail.com
Tele: (340) 773-8709
Fax: (340) 773-867

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay, L6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of December, 2017, I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

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

Gregory H. Hodges
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com



period outlined in 5 V.I.C. § 31(3)(A) as a species of an action upon contract.³⁴ Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.³⁵

³⁴ Alternatively, these claims could have been pursued under 26 V.I.C. § 75(b)(2)(i) to "enforce the partner's rights under sections 71, 73, or 74 of this chapter," which, as "action upon a liability created by statute," are also subject, whether directly or by analogy, to a six year limitations period under 5 V.I.C. § 31(3)(B).

³⁵ Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.


In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

DATED: July 21, 2017.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By:


Court Clerk Supervisor 7/24/17

CERTIFIED A TRUE COPY

DATE:

July 24, 2017

ESTRELLA H. GEORGE

ACTING CLERK OF THE COURT

BY:


COURT CLERK II



Dudley, Topper and Feuerzeig, LLP
 United Corporation
 Civil No. SX-12-CV-99

ITEM #1

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments

Summary of Withdrawals

Description	Hamed					Total
	Mohammed	Waleed	Waheed	Mufeed	Hisham	
Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
Total Partnership	1,500,000.00	5,785,262.23	372,155.95	-	-	7,657,418.18
Deposits to bank and brokerage accounts	16,505.80	430,439.13	100,000.00	306,999.56	510,061.57	1,364,006.06
Payments to credit cards	-	422,824.70	-	179,786.80	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-
Investment style analysis	16,505.80	853,263.83	100,000.00	486,786.36	510,061.57	1,966,617.56
Withdrawals	\$ 1,516,505.80	\$ 6,638,526.06	\$ 472,155.95	\$ 486,786.36	\$ 510,061.57	\$ 9,624,035.74



Accounts include adjustments made for withdrawals in 2016.