

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

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED 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.,**

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Yusuf’s motion to strike Hamed Claim Nos. H-41 to H-141 and additional “maybe” claims.¹ In response, Hamed filed an opposition and Yusuf filed a reply thereafter. Hamed also filed a motion for leave to file a sur-response, to which Yusuf filed an opposition and Hamed filed a reply thereafter.²

In his motion, Yusuf argued out that while he timely submitted his accounting claims pursuant to the Master’s August 31, 2016 order,³ Hamed never filed his accounting claims. (Motion, p. 2) Instead, Yusuf pointed out that Hamed filed a “Notice of Partnership Claims and Objections to Yusuf’s Post-January 2012 Accounting” with the Court on September 30, 2016, and subsequently filed a “Revised Notice of Partnership Claims and Objections to Yusuf’s Post-January 2012 Accounting” with the Master on October 12, 2016 (hereinafter “Hamed’s Revised Claims”).⁴ (Id.) Yusuf also argued that of the 100 questions listed in Hamed Claims H-41 to H-141, many cannot be considered claims against Yusuf or the Partnership because these entries “on their face inure to the benefit of Hamed or his family owned company,

¹ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (January 7, 2015 order: Final Wind Up Plan) The Master finds that that Yusuf’s motion to strike Hamed Claim Nos H-41 to H-141 and additional “maybe” claims falls within the scope of the Master’s report and recommendation given that Hamed Claim Nos. H-41 to H-141 and additional “maybe” claims are alleged debts owed by the Partnership or owed to the Partnership.

² The Master will deny Hamed’s motion for leave to file a sur-response and not consider any sur-response or sur-reply filed in response to Yusuf’s motion to strike Hamed Claims Nos. H-41 to H-141 and additional “maybe” claims.

³ The Master’s August 31, 2016 order directed the Partners to submit any objections to the Partnership accounting and any claims against the Partnership or a Partner by September 30, 2016.

⁴ Yusuf claimed that Hamed re-submitted Hamed’s Revised Claims because “Hamed improperly filed his previous claims with the Court, as opposed to the Master, and because his filing included financial information that should have been redacted.” (Motion, p. 2) Yusuf noted that “Hamed took the position that an accounting of the Partner’s accounts could not be done” and that “no such 1986-2012 accounting is even arguably possible,” and on that basis ‘object[ed] to having to file the 1986-2012 ‘partnership claims’ now as ordered by the Master.” (Id., at p. 3) Yusuf also noted that, as to the post-2012 accounting, Hamed similarly “‘object[ed] to the requirement that he submit a full statement of disputes and objections to that accounting.’” (Id.)

KAC357, Inc.”⁵ or “relate to entries with the designation ‘as per Court Order,’”⁶ and many relates to matters with “a *de minimus* value” and “is a waste of the parties’ and Master’s resources to spend any more time on these matters.”⁷ (Id., at p. 4-5) Moreover, Yusuf further argued that since Hamed raised questions rather than actual claims, these questions should be stricken. (Id., at p. 5-6) Finally, Yusuf argued that there are additional fourteen claims that should also be stricken because they either relate to matters with a *de minimus* value or they are questions rather than actual claims.⁸ As such, Yusuf requested the Master to strike Hamed Claim Nos. H-41 to H-141 and the additional fourteen claims.

In his opposition, Hamed argued that under the Uniform Partnership Act/Revised Uniform Partnership Act (hereinafter “Act”), which is applicable here via the Final Wind-Up Plan,⁹ “each partner has an ‘account’, that at the end of any RUPA Partnership there must be an evaluation of the calculated value of these accounts, and that to do so, the partners can make their case as to any amounts which must be credited to or recovered by the Partnership.” (Opp., p. 2) Thus, Hamed pointed out that, under the Act, it is “impossible” to wind up a partnership “without the determination and calculation of all questioned accounting transactions in the books.” (Id., at p. 3) Hamed explained that the Hamed Revised Claims are all properly before the Master because “[t]here is no such thing as a claim that is ‘too small’ to be heard” and “there is no distinction in the Act between items that are called ‘questions’ or ‘problems’ with

⁵ Yusuf listed the following claims: Hamed Claim Nos. H-43 to H-48, H-50 to H-56, H-57 to H-59, H-61 to H-62, H-64, H-66 to H-67, H-71 to H-89, H-92 to H-99, H-101 to H-111, H-116 to H-118, H-121 to H-122, H-124 to H-128, and H-131 to H-141. (Motion, p. 4)

⁶ Yusuf listed the following claims: Hamed Claim Nos. H-88 and H-89. (Id.)

⁷ Yusuf listed the following claims: (under \$1,000) Hamed Claim Nos. H-69, H-117, H-119; (between \$1,000 and \$5,000) Hamed Claim Nos. H-58, H-65, H-67, H-70, H-85, H-90 to H-93, H-95 to H-96, H-98 to H-100, H-103, H-107, H-109 to H-110, H-114, H-121 to H-122, H-125 to H-126, H-135; and (between \$5,000 and \$10,000) Hamed Claim Nos. H-52, H-66, H-81, H-104 to H-106, H-108, H-113, H-123.

⁸ Yusuf listed the following claims: Hamed Claim Nos. H-7, H-8, H-24, H-25, H-27, H-29, H-31, H-34, H-36, H-39, H-40, H-147, H-156, and H-158.

⁹ The Final Wind-Up Plan provides:

Section 1.1 "Act" means the Uniform Partnership Act, V.I. Code Ann. tit. 26, §§ 1-274.

the partnership's accounting as opposed to ones being labeled 'claims.'" (Id., at p. 4-5) Moreover, Hamed also pointed out that he provided Yusuf with "146 pages of individual, explicit, detailed description of the claims, on a claim-by-claim basis" and that pursuant to the joint discovery and scheduling plan, entered on January 29, 2018 (hereinafter "Discovery Plan"), Parties agreed that Hamed would pay 100% of the cost of John Gaffney performing this "limited, specific and well-described analysis." (Id., at p. 5-6) Lastly, Hamed pointed out that it is impossible to argue the validity of all these claims within its five-page opposition. As such, Hamed requested the Master to deny Yusuf's motion.

In his reply, Yusuf reiterated his arguments that: (1) Hamed missed the deadline to submit his accounting claims; and (2) Hamed Claim Nos. H-41 to H-141 and the additional fourteen claims are all questions rather than actual claims. (Reply)

DISCUSSION

Here, Yusuf essentially argued the following reasons for striking Hamed Claim Nos. H-41 to H-141 and the additional fourteen claims: (1) they are untimely; (2) they are questions rather than actual claims; (3) some are for the benefit of Hamed or his family owned company; (4) some are of a de minimus value; and (5) some are filed per Court order. The Master will address each in turn.

First, the Master must note that Hamed never addressed or denied in his opposition the fact that he did not timely submit his accounting claims to the Master by the September 30, 2016 deadline. While it is of the utmost importance for Parties to abide by the deadlines set forth by the Master and by the Court, the Master finds that it would be unduly harsh to strike all of Hamed's accounting claims due to procedural technicality. Furthermore, it is undisputed that Hamed filed "Notice of Partnership Claims and Objections to Yusuf's Post-January 2012 Accounting" with the Court by the September 30, 2016 deadline, and later filed the Revised

Hamed Claims with the Master shortly thereafter. As such, the Master finds Yusuf's argument that Hamed Claim Nos. H-41 to H-141 and the additional fourteen claims should be stricken for its untimeliness to be unpersuasive.

Second, the Master disagrees with Yusuf's focus on the difference between "questions" and "claims" in this instance. Regardless of how they are labeled, the fact of the matter is that Hamed flagged the ledger entries with his objections, and these become Hamed's claims. For example, Hamed Claim No. H-41 flagged the ledger entry in connection with payments to Caribbean Refrigeration & Mechanical LLC and requested further information as to the purpose of the payment and supporting documentation. The Master interprets this as a claim against the Partnership for clearer accounting in connection with payments to Caribbean Refrigeration & Mechanical LLC. As such, the Master finds Yusuf's argument that Hamed Claim Nos. H-41 to H-141 and the additional fourteen claims should be stricken because they are questions rather than claims to be unpersuasive.

Finally, the Master similarly finds Yusuf's argument that Hamed Claim Nos. H-41 to H-141 and the additional fourteen claims should be stricken because some are for the benefit of Hamed or his family owned company, some are of a *de minimus* value, and some are filed per Court order to be unpersuasive. Yusuf failed to cite to any binding authority or any legal basis to support his argument. As a result, this is a deficient argument and must be denied. *See Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012) ("The rules that require a litigant to brief and support his arguments ... before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument"); *Bertrand v. Mystic Granite & Marble, Inc.*, 63 V.I. 722, 782 (V.I. 2015) ("[S]imply stating a principle of law without any argument or explanation of how it applies to

the case at hand is not sufficient to fairly present the issue to the Superior Court”) (citing *Yusuf v. Hamed*, 59 V.I. 841, 851 n.5 (V.I. 2013)).

Accordingly, the Master will deny Yusuf’s motion to strike Hamed Claim Nos. H-41 to H-141 and the additional fourteen claims. However, despite having denied Yusuf’s instant motion to strike in this instance, the Master will still consider future motions, if any, challenging the validity of a specific claim within Hamed Claim Nos. H-41 to H-141 or the additional fourteen claims. At this juncture, Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan.¹⁰ It is hereby:

¹⁰ The Discovery Plan provided, in relevant part pertinent to this motion:

A. Discovery as to Hamed Claims H-41 through H-141

Defendants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) will be filing a Motion to Strike Claims H-41 to H-141, which, if granted, will obviate the need for any discovery relating to any claim that is stricken. Plaintiff will be opposing that Motion.

In the event the Motion is denied in part or in full, the parties agree to the following discovery regarding any of the Claims H-41 to H-141, which survive that Motion:

1. Mr. Gaffney will be paid by Hamed at the rate of \$150.00 per hour for the time he works, set forth in a contemporaneous kept timesheet for answering the items in this “Section A”. Mr. Gaffney will submit daily emails to counsel for Hamed informing them of the hours worked and what was done. Unless counsel for Hamed disapproves the work by the end of the following day, Mr. Gaffney will continue the work. If it is disapproved, the Master will be consulted for a decision before work resumes. These emails will then form the basis of weekly billings that shall be paid within one month of receipt of same.

2. For each of the Hamed Claims numbered H-41 through H-141¹, which survive the Motion, John Gaffney will provide a written response, in his fiduciary capacity as the Partnership Accountant, to the following two items:

a. Interrogatory: Provide a written statement describing this transaction, with reference to when the actual activity or delivery occurred, who the persons/entities are, what amounts were involved, and what it was for (with reference to why the funds are allegedly properly charged to the Partnership) and making reference to any checks, invoices or other relevant documents.

b. Production of Documents: Attach to the above Interrogatory response, the documents referenced in your response.

3. Mr. Gaffney’s responses to interrogatories and document requests will be provided in the bi-weekly period in which they are completed and not in groups or all at once, by July 31, 2018. The parties may also subpoena third parties related to the transactions at issue.

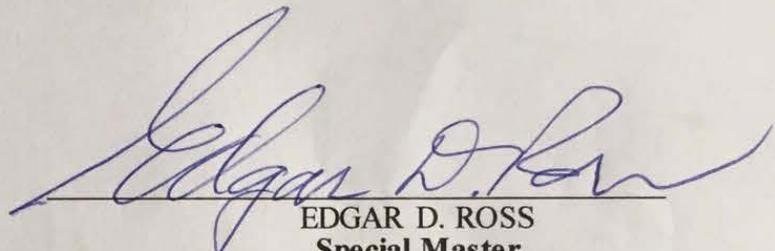
4. Hamed shall have a total of fourteen hours to depose Mr. Gaffney with respect to any of the Claims H-41 – H-141 that survive the Motion. Yusuf and United will be allowed a similar amount of time at each examination for cross-examination, which will not be charged to Hamed’s 14 hours, and Hamed re-direct, which will be charged to his 14 hours. The depositions shall be conducted on four separate, non-consecutive days of Hamed’s selection based on Mr. Gaffney’s reasonable availability, unless Mr. Gaffney agrees to a difference schedule, and the Notice of Deposition shall specify the claims and responses to be covered in the deposition. The parties may agree to tape or video-recorded deposition rather than a court reporter.

5. The written portion of this process will be completed by Mr. Gaffney by July 31, 2018.

ORDERED that Yusuf's motion to strike Hamed Claims Nos. H-41 to H-141 and additional "maybe" claims is **DENIED**. Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan. **And** it is hereby:

ORDERED that Hamed's motion for leave to file a sur-response is **DENIED**. No sur-response or sur-reply filed thereto was considered herein.

DONE and so **ORDERED** this 10th day of August, 2018.


EDGAR D. ROSS
Special Master

6. No part of these funds paid to Mr. Gaffney by Hamed will be paid by him or shared by him with Yusuf or United or any third person or entity.

¹ Gaffney will be allowed to identify, collect and transport sales journals for Plaza Extra-Tutu Park and Plaza Extra-West from January 2013 through April 2015 as needed. Hamed will arrange or pay for the transport.