

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.

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

PLAINTIFF,

v.

**UNITED CORPORATION,**

DEFENDANT.

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**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 Hamed’s expedited motion to compel responses to discovery served in connection with Hamed Claim No. H-1:<sup>1</sup> Hamed’s 50% interest in the sale proceeds of Estate Dorothea—in the total amount of \$802,966.<sup>2</sup> Yusuf filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed alleged that it is undisputed that “Partnership funds of more than \$1.6 million were used to create a corporation (Y&S) and to have that corporation buy real property (Condos) in Estate Dorothea,” that “Fathi Yusuf was named as the ‘Agent’ for the collection of those funds – for 50/50 disbursal to the 2 families – the ‘Nominee’” and that “Fathi Yusuf collected the funds.” (Motion, p. 2) Hamed claimed that “[i]n 2012 Fathi requested that the Hamed representative cause the transfer of that Y&S stock completing the contract, and that by Yusuf’s own written calculation, Hamed is owed \$802,966 for his 50%” and that “this transfer by the Hamed representative as directed by Yusuf as the agent took place in 2012, at which time the \$802,966 was to be paid by Yusuf to Hamed [yet] [i]t was not paid.” (Id.) Hamed further claimed that “Yusuf has repeatedly...refused to answer 1 simple interrogatory and 1 simple document request” served in connection with Hamed Claim No. H-1. (Id.) On December 18, 2018, after a Rule 37 conference was held, Yusuf supplemented his response with: “Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was

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<sup>1</sup> In Hamed’s motion, Hamed described Hamed Claim No. H-1:

a. Description of this Claim

Certain property in St. Thomas, known as the "Dorothea Property," was jointly purchased with Partnership funds by Fathi Yusuf and Mohammad Hamed (in the name of two entities known as Y&S and R&F). This property was sold and Yusuf received the funds, but did not return Hamed's half of the funds. The amount owed Hamed from the sale had been reduced to a handwritten document, written by Yusuf and given to Hamed, showing the total owed Hamed was \$802,966. In 2012, Yusuf, as agent, directed the release of escrow. (Motion, p. 8)

<sup>2</sup> 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.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed’s instant motion to compel falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-1 is an alleged debt owed by the Partnership to Hamed.

paid directly to a charity as part of the agreement to donate any interest.” (Id., at p. 3) Hamed explained that, as a result, another Rule 37 conference was set but “Yusuf’s counsel did not appear and did not provide any prior written or other notice of non-appearance (but did send an email more than an hour later requesting a change of date).” (Id.) Hamed argued that “[i]t is impossible for Hamed to proceed without getting the following answers [to Interrogatory 3], at a minimum, from Fathi Yusuf” and thus, requested the Master to compel Yusuf to respond to discovery served in connection with Hamed Claim No. H-1. (Id., at p. 13)

In his opposition, Yusuf argued that his supplemental response “is sufficient and consistent with prior testimony and discovery.” (Opp., p. 2) Yusuf further argued that he has “consistently maintained that claims relating to the Dorothea property/sale of Y&S stock occurred prior to September 17, 2006—the deadline imposed by the Court in the Limitations Order” and “[h]ence, Yusuf has consistently maintained that Hamed’s Claim H-1 should no longer remain as an active and open claim but is barred by the Limitations Order...” (Id.) Yusuf also argued that “regardless of whether these claims survive, Yusuf provided information that there was no written documentation as to the payments he received and that those payments, in fact, were made before 2006.” (Id.) Yusuf pointed out that “[w]hether this claim survives a dispositive motion is not at issue in this Motion to Compel” and instead, “[t]he issue is the sufficiency of Yusuf’s response.” (Id., at p. 3) To which Yusuf further pointed out that “Yusuf’s response is sufficient and reflects the timing of the payments he received and that Yusuf has no documentation as to the receipt of the payments” and “[h]ence, Yusuf shows that there is no basis to compel further response to the discovery.”<sup>3</sup> (Id.)

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<sup>3</sup> Yusuf noted in his opposition that Yusuf’s counsel did not ignore the last Rule 37 conference as Hamed alleged, but had missed it due to the following reasons: (i) “[c]ounsel for Yusuf did not anticipate that the meeting would be considered a Rule 37 conference, but instead, understood it to be another weekly meeting”; and (ii) “[c]ounsel for Yusuf mis-calendared the meeting and understood it to be on the following day... and upon learning of the issue, communicated the error in scheduling and offered to meet again.” (Opp., p. 4) Thus, Yusuf clarified

In his reply, Hamed pointed out that Yusuf “states (without declaration, evidentiary support or a properly signed interrogatory response) that [Yusuf’s] new story should be accepted without discovery—that he didn’t receive the final payment in or around 2012 (within three years of his deposition) when he requested the escrowed deed be released” and that “he has absolutely no documents despite having received more than \$1.5 million – and having a duty to document the transactions as the nominee/agent.” (Reply, p. 2) Hamed also pointed out that Yusuf “ignores the fact that Hamed is allowed to obtain discovery based on the several legal theories in the motion to compel.” (Id.) Hamed reiterated in his reply that Yusuf “must be made to answer [Interrogatory 3] and sign off on it [as required by Rule 33(b)(5) of the Virgin Islands Rules of Civil Procedure].”<sup>4</sup> (Id.)

## DISCUSSION<sup>5</sup>

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that “[t]he failure to attend the meeting was a function of a calendaring error, not avoidance and is not a reflection of a failure to cooperate or a need to be compelled to otherwise further respond.” (Id., at p. 5)

<sup>4</sup> Hamed noted in his reply that he finds it odd that Yusuf’s counsel explained that they missed the Rule 37 conference due to scheduling error. (Reply, p. 6) Instead, Hamed speculated that the “[n]on-attendance was not slopping—it was a misplaced effort to protect [their client].” (Id., at p. 7). At this time, Hamed stated that he “does not wish to pursue this further, but if Yusuf objects to these comments, an evidentiary hearing should be held.” (Id., at p. 8)

<sup>5</sup> The Master must note at the outset that Hamed and Yusuf appears to treat the sale of Estate Dorothea and the sale of the Y&S Corporation, Inc.’s stock as they are one and the same. For example, in Hamed’s motion, in support for his claim for 50% interest in the sale proceeds of Estate Dorothea in the total amount of \$802,966, Hamed claimed that “[i]n 2012 Fathi requested that the Hamed representative cause the transfer of that Y&S stock completing the contract, and that by Yusuf’s own written calculation, Hamed is owed \$802,966 for his 50%” and that “this transfer by the Hamed representative as directed by Yusuf as the agent took place in 2012, at which time the \$802,966 was to be paid by Yusuf to Hamed [yet] [i]t was not paid.” And in Yusuf’s original accounting claims, filed on September 30, 2016 (hereinafter “Yusuf’s Accounting Claims”), Yusuf stated:

### V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate, One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeih Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock, Although claims to these funds were the subject of a separate suit (*Hamed v. Yusuf*, Superior Court of St. Croix, SX-2014-CY-278), the parties stipulated to have these claims consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966 should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. (Yusuf’s Accounting Claims, p. 11)

Based on a review of the record before the Master, the Master finds that the following facts are undisputed: (1) Hamed and Yusuf each have 50% interest in the sale proceeds of

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And in Yusuf's amended accounting claims, filed on October 30, 2017 (hereinafter "Yusuf's Amended Accounting Claims"), Yusuf essentially made the same statement except revised the end to state:

... As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966 would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y & S and R&F. However, since the Accounting Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the Accounting Order. (Yusuf's Amended Accounting Claims, p. 14-15)

However, neither Hamed nor Yusuf provided the Master with any explanation or documentation as to why the Master should treat the sale of Estate Dorothea and the sale of the Y&S Corporation, Inc.'s stock as they are one and the same. Nevertheless, for the purpose of this Order, the Master need not delve into the intricacies of the sale of Estate Dorothea and the sale of the Y&S Corporation, Inc.'s stock. At this juncture, it is sufficient that the Master finds that the facts stated below are undisputed.

Estate Dorothea;<sup>6</sup> (2) Yusuf received the entire sale proceeds of Estate Dorothea;<sup>7</sup> and (3) Hamed was never paid for his 50% interest in the sale proceeds.<sup>8</sup>

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<sup>6</sup> In his motion, Hamed stated that “[the Dorothea Property] was sold and Yusuf received the funds, but did not return Hamed’s half of the funds.” (Motion, p. 8)

Yusuf testified to the following at his April 2, 2014 deposition:

Q. (Mr. Holt) All right. All right. Showing you Exhibit No. 12, can you tell me if you recognize that? Do you recognize that document –

A. Yes, it’s my handwriting.

Q. And at the top it has “Dorothia” written, is that correct?

A. Yes.

Q. Can you tell me, what – what – what what does this transaction mean?

A. The transaction that we bought – we was in partnership with a third person, **that we own 50 percent of the Dorothea real estate – a real estate in Dorothia**, and the other partner owned the other 50 percent.

Finally, I come to this decision to sell it to my partner. He bought it at one-and-half million, and this number below, it was an idea to Mr. Hamed what would I – I am counted for, up to the time I give it to him. I tell him what it is. ... That transfer the property cost me money, well, I have to put that money out of my pocket, even though the obligation was on both of us.

...

...

Q. No problem. Let me go down this list.

**Dorothea is – the 1.5 million were – were monies paid that belonged to you and – and Mr. Hamed?**

**A. Yes.**

...

...

Q. So we – tell you what, let’s get to the bottom. At the bottom of this calculation is \$802,966.

Do you see that?

A. Sir, it’s a lot of – this \$8,200 (sic) I owe him on account.

Q. Okay.

...

...

Q. Okay. So one of the items that you owe them for, I understand there are items back and forth, but one of the items you owe him is the 802,960 --

A. Not 802, sir. I told you I already spent 105, or most of it, in a property where both of us is responsible to spend that money.

Q. Okay. So you would take the 105 off this 802?

A. I might – well, the others – yeah, this – that should go off.

...

...

**Q. All right. So the sale of – the money in Dorothia was 1.5 million, to be split between the two of you.**

**A. Yes, sir.**

...

...

Q. Okay. So you start with the 1.5 million, which is 50/50, and then you start adding –

A. One million and half is absolutely 50/50. I am not hiding anything.

What is disputed, however, is whether Hamed’s claim for his 50% interest in the sales proceeds of Estate Dorothea—Hamed Claim No. H-1—is barred by the Limitation Order.<sup>9</sup> Hamed argued that Hamed Claim No. H-1 is not barred by the Limitation Order, and thus, he is entitled to discovery thereto. On the other hand, Yusuf argued that Hamed Claim No. H-1 is barred by the Limitation Order, and thus, Hamed is not entitled to discovery thereto. Ultimately, the issue of whether Hamed Claim No. H-1 is barred by the Limitation Order is not to be determined by the parties, but to be determined by the Master. Thus, at this juncture, the Master will permit discovery as to Hamed Claim No. H-1.

### **1. Motion to Compel**

Rule 37 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 37”) governs the scope and procedure of motion for an order compelling disclosure or discovery. Rule 37

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Q. Okay. And when did you get that money?

A. I get that money, I don’t have a date. But I get that money maybe, I can guarantee you, it’s not three years. It’s less than three years. I sold this property many, many years ago. (Motion, Exhibit 4-Deposition Transcript of Yusuf’s April 2, 2014, pp. 99-106) (Emphasis added)

<sup>7</sup> This is essentially the crux of Hamed Claim No. H-1 and Hamed’s complaint in Case No. SX-2014-CV-278. See *supra* footnote 1.

In his supplemental response to Hamed’s discovery as to Hamed Claim No. H-1, Yusuf stated:

**Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed** before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest. (Motion, p. 3) (Opp., p. 2) (Emphasis added)

<sup>8</sup> This is essentially the crux of Hamed Claim No. H-1 and Hamed’s complaint in Case No. SX-2014-CV-278. See *supra* footnote 1.

In his April 2, 2014 deposition, Yusuf admitted that Hamed has 50% interest in the sale proceeds of Estate Dorothea. Nevertheless, Yusuf argued in his opposition to Hamed’s motion that Hamed’s claim for his 50% interest in the sale proceeds of Estate Dorothea is barred by the Limitation Order:

**Yusuf has consistently maintained that claims relating to the Dorothea property/sale of Y&S stock occurred prior to September 17, 2006—the deadline imposed by the Court in the Limitations Order.** Hence, Yusuf has consistently maintained that [Hamed Claim No.] H-1 should no longer remain as an active and open claim... However, regardless of whether these claims survive, Yusuf provided information that there was no written documentation as to the payments he received and that those payments, in fact, were made before 2006. (Opp., p. 2) (Emphasis added)

<sup>9</sup> In a memorandum opinion and order dated July 21, 2017, the Court ordered, *inter alia*, 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” (hereinafter “Limitation Order”). *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, \*44-45 (V.I. Super. Ct., July 21, 2017).

provides that “[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection...if (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents or fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34. V.I. R. CIV. P. 37(a)(3)(B)(iii)-(iv). Rule 37 also provides that “[f]or purposes of this subpart (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4).

#### **A. Hamed’s Interrogatory**

Hamed’s Interrogatory 3, relates to Hamed Claim No. H-1:

Describe **what was sold and to whom**, as well as **each payment received** for the sale of that stock -- with particularity. For each such payment, this will include but not be limited to payor, receiving party, amount, where deposited, present location of funds and what amount, if any, of this was given to any member of the Hamed family. Identify any documents which support or relate to your response, **and any witnesses who would have knowledge and what knowledge you believe they have**. (Motion, pp. 2-3) (Emphasis in original.)

Yusuf’s Response:<sup>10</sup>

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest. (Motion, p. 3)

The Master finds that Yusuf’s response to Hamed’s Interrogatory 3 is deficient and that Yusuf failed to produce the requested documents. Under Rule 37(a)(4), “an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4). Thus, the Master will grant Hamed’s motion to compel.<sup>11</sup>

#### **CONCLUSION**

Based on the foregoing, the Master will grant Hamed’s motion to compel. Accordingly, it is hereby:

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<sup>10</sup> According to Hamed’s motion, “Yusuf’s initial response was a complete refusal to answer [to Interrogatory 3]” but subsequently filed a supplemental response thereto on December 18, 2018.

<sup>11</sup> If the issue of whether Hamed Claim No. H-1 is barred by the Limitation Order remains in dispute after discovery, then either party may file a motion requesting the Master to make a determination thereto.

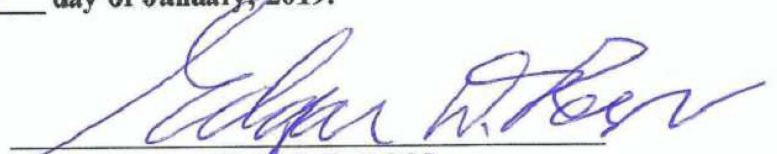


**ORDERED** that Hamed's motion to compel is **GRANTED**. It is further:

**ORDERED** that, **within seven (7) days from the date of entry of this order**, Yusuf shall file supplemental responses to Hamed's Interrogatory 3. **And** it is further:

**ORDERED** that Yusuf's supplemental responses shall be in compliance with Rules 33 and 34 of the Virgin Islands Rule of Civil Procedure.

**DONE** and so **ORDERED** this 7<sup>th</sup> day of January, 2019.

  
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EDGAR D. ROSS  
Special Master