

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 Yusuf Claim No. Y-12: foreign accounts and Jordanian properties.<sup>1</sup> In response, Yusuf filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed stated that “Yusuf has simply refused to answer 1 interrogatory and 2 RFPD’s [sic].” (Motion, p. 2) Hamed further stated that his interrogatory “was basically ignored” because while Yusuf referenced to several documents, these documents provided “no details, no information and no direction whatsoever as to the parameters of this claim.” (Id., at p. 3) Hamed pointed out that, as a result, a Rule 37 letter was sent and a conference was held whereby “Attorney Perrell stated that this interrogatory would be supplemented by December 15, 2018.” (Id., at pp. 3-4) (Emphasis omitted) Hamed further pointed out that, after two extensions, Yusuf responded with supplemental responses on December 18, 2018, but “nothing at all about this claim was submitted.” (Id., at p. 4) (Emphasis omitted) Thus, Hamed explained that 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 he “cannot defend against [Yusuf Claim No. Y-12] without information” and that “[a]ll that [he] asks is that Yusuf be made to list the individual properties and accounts, and for each give the facts – who, what, when, and how.” (Id., at pp. 2-3, 7) Thus, Hamed requested the Master to compel Yusuf to respond to discovery served in connection with Yusuf Claims No. Y-12.

In his opposition, Yusuf argued that “there are no grounds to compel” because “Yusuf’s Claim [No.] Y-12 has been set out and supporting documentation has been provided and

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<sup>1</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 Yusuf Claim No. Y-12 is an alleged debt owed by Hamed to the Partnership.

supplemented on numerous occasions.” (Opp., p. 2) First, Yusuf pointed out that in his original accounting claims, filed on September 30, 2016 (hereinafter “Yusuf’s Accounting Claims”), he “identified certain claims relating to foreign accounts and property in Jordan” and included several exhibits—Exhibit N: “Land Value Estimation that specifically identified the properties at issue” and Exhibit O: “Written Agreement [between Yusuf and Hamed] in Arabic”—in support thereto. (Id.) Second, Yusuf pointed out that in his supplementation to Yusuf’s Accounting Claims, filed on December 7, 2016 (hereinafter “Yusuf’s Supplementation”), he included several exhibits relating to the Jordanian Properties—Exhibit R: “‘Payment Analysis’ setting for the values and payments as well as their exchange rates,” Exhibit S: “English translation of his earlier filed Exhibit O,” and Exhibit T: “English and Arabic versions of the invoices described in the Payment Analysis.” (Id., at p. 3) Third, Yusuf pointed out that in his amended supplementation to Yusuf’s Accounting Claims, filed on December 12, 2016 (hereinafter “Yusuf’s Amended Supplementation”), he “clarified certain expenses that he was seeking.” (Id.) Fourth, Yusuf pointed out that in his amended accounting claims, filed on October 30, 2017 (hereinafter “Yusuf’s Amended Accounting Claims”) per the Court’s Limitation Order,<sup>2</sup> he “again identified his claims as to the Jordanian Properties as well as certain foreign accounts but then noted that claims (c) through (e) were no longer available given the Limitation Order.” (Id.) Lastly, Yusuf pointed out that in response to Hamed’s discovery, “Yusuf objected to the compound nature of the requests but, nonetheless, incorporated by reference, the detailed information already provided to Hamed on various occasions.” (Id.) Yusuf claimed that at the Rule 37 conference held on November 12, 2018,

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<sup>2</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).

“counsel for Yusuf maintained certain objections as to various discovery but, as to others, advised that if additional information was available, it would be provided on or before December 15, 2018.” (Id., at p. 4) Yusuf explained that “[t]he representation of counsel for Yusuf that ‘there would be supplementation’ was a representation that to the extent there was anything to supplement, Yusuf would do it on or before that mid-December timeframe” and since “there are no additional documents of which Yusuf is aware that have not otherwise already been disclosed, and hence, nothing further to compel” and “no further supplementation was provided.”<sup>3</sup> (Id.)

In his reply, Hamed reiterated that “Yusuf completely disregarded and failed to respond to the portion of the interrogatory relating to foreign accounts” and that “there is no interrogatory answer regarding the properties.” (Reply, pp. 2, 4) (Emphasis omitted) Hamed pointed out that “Yusuf must provide responses [to the interrogatory]...in writing and signed by Fathi Yusuf.”<sup>4</sup> (Id., at p. 5)

## **DISCUSSION**

### **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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<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. 7) Thus, Yusuf clarified that “[t]he failure to attend the meeting was not an attempt to ignore opposing counsel” and “[t]he fact that no further discovery was submitted on this issue (Y-12)...is not a reflection of a failure to cooperate or a need to be compelled to otherwise further respond and the failure to attend the meeting was a function of a calendaring error, not avoidance.” (Id.)

<sup>4</sup> In his reply, Hamed did not respond to Yusuf’s explanation for Yusuf’s counsel’s failure to appear at the last Rule 37 conference. However, Hamed noted in his reply to Yusuf’s opposition to Hamed’s expedited motion to compel responses to discovery served in connection with Hamed Claim No. H-1 that he finds it odd that Yusuf’s counsel explained that they missed the Rule 37 conference due to scheduling error, and instead, Hamed speculated that the “[n]on-attendance was not slopping—it was a misplaced effort to protect [their client].” (Reply re Hamed Claim No. H-1, pp. 6-7). Nevertheless, Hamed also stated therein that, at this time, 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)

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<sup>5</sup>**

Hamed’s Interrogatory 30, relates to Yusuf Claim No. Y-12:

This interrogatory relates to Claim Y-12: "Foreign Accts and Jordanian Properties." **Please identify all foreign accounts and Jordanian properties** that were funded or purchased with funds from the Plaza Extra supermarkets. **For each such foreign account** individually: include the name of the account, the account number, the name of the institution and its location, the date it was opened, how money generated by the Plaza Extra supermarkets got into the foreign account, the dates deposits and withdrawals were made from each account and the amounts, the date the last transaction on the account occurred, whether the account is active or closed. If open, provide the present balance and if closed, please identify the date the account closed and who closed it. **For the Jordanian property, for each property** individually please identify (in English) the date it was purchased, the name of the title holder, the property description, who presently owns the property, whether the purchase was in cash or was transferred from a bank, and how all funds generated or provided by Plaza Extra supermarkets were transferred for the purchase of the property (including amounts and dates of all such transactions). (Motion, p. 3) (Emphasis in original)

Yusuf’s Response:

Defendants object to this Interrogatory because it is compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.

Without waiving any objection to this Interrogatory, Yusuf incorporates the information concerning the foreign accounts and Jordanian properties set forth in his September 30, 2016 Accounting Claims and Proposed Distribution Plan, his October 30, 2017 Amended Accounting Claims and his December 12, 2016 Amended Supplementation of Accounting Claims as responsive to this Interrogatory. (Motion, p. 3)

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<sup>5</sup> In his motion, Hamed stated that “Yusuf has simply refused to answer 1 interrogatory and 2 RFPD’s [sic].” However, in his motion, Hamed only included Interrogatory 30 and did not include any requests for production of documents.

Upon review of the documents referenced in Yusuf's response, the Master finds that Yusuf's response to Interrogatory 30 is deficient.<sup>6</sup> 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 as to Interrogatory 30.

#### CONCLUSION

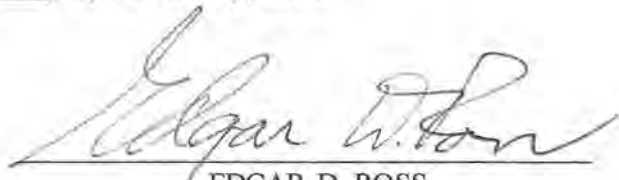
Based on the foregoing, the Master will grant Hamed's motion to compel. Accordingly, it is hereby:

**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 30. **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 8<sup>th</sup> day of January, 2019.

  
EDGAR D. ROSS  
Special Master

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<sup>6</sup> Yusuf's Accounting Claims, Yusuf's Supplementation, Yusuf's Amended Supplementation, Yusuf's Amended Accounting Claims, and the relevant exhibits attached thereto did not provide a sufficient response to Hamed's Interrogatory 30. For example, none of the aforementioned documents included "the name of the account, ...the name of the institution and its location, the date it was opened, how money generated by the Plaza Extra supermarkets got into the foreign account, the dates deposits and withdrawals were made from each account and the amounts, the date the last transaction on the account occurred, whether the account is active or closed" as requested in Hamed's Interrogatory 30.