

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,	)	CIVIL NO. SX-12-CV-370
v.	)	
	)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
Defendants/Counterclaimants,	)	JUDGMENT, AND
v.	)	PARTNERSHIP DISSOLUTION,
	)	WIND UP, AND ACCOUNTING
	)	
WALEED HAMED, WAHEED HAMED,	)	
MUFEED HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
	)	
WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.	)	
	)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
	)	
<u>Defendant.</u>	)	
	)	
WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.	)	
	)	
FATHI YUSUF,	)	ACTION FOR DEBT AND
	)	CONVERSION
	)	
<u>Defendant.</u>	)	

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

**OPPOSITION TO MOTION AS TO HAMED CLAIM NO. H-3: \$504,591.03 OF  
PARTNERSHIP FUNDS TAKEN BY YUSUF- PAID TO HIS LAWYER**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), respectfully submit this Opposition to the “Motion as to Hamed Claim No. H-3: \$504,591.03 of Partnership Funds Taken by Yusuf-Paid to his Lawyer” filed on December 20, 2017 (the “Motion”). The Motion should be summarily denied because this claim requires discovery before it will be ripe for determination by the Master.

In Defendants’ Bench Memorandum for Status Conference (“Bench Memo”) filed in advance of the status conference held on December 15, 2017, Defendants represented that this disputed claim was not ripe for determination because additional discovery was needed. *See* Exhibit A to Bench Memo at page 6. In “Hamed’s Response to Yusuf’s Bench Memo” filed on December 14, 2017, Hamed states: “Judge Brady has ruled on this. Yusuf should explain why discovery is needed.” *See* Response to Bench Memo at page 2. At the December 15, 2017 status conference, counsel for Hamed stated the following:

First off, when they say they want to do discovery on an item, we take the position that we don’t have veto power over that, so that is why we just agreed to take them off the list. It isn’t like we necessarily believe it is needed, but if they say it’s needed we can’t veto that.

*See* portions of transcript of the status conference attached as **Exhibit 1** at page 9. Despite counsel for Hamed statement to the Master that his client could not veto Defendants’ right to engage in discovery, the Motion filed five days after the status conference seeks to do just that, namely, preclude Defendants from engaging in any discovery concerning this claim.

In an effort to convince the Master that the claim is ripe for immediate disposition, Hamed disingenuously argues that the Court has already ruled that the \$504,591.03 that was paid to Fuerst Littleman David & Joseph, PL should be disgorged by Yusuf, citing the Court’s April 25, 2013 Memorandum Opinion and Order at page 11, ¶ 38. What the Court actually found was as follows:

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Funds from supermarket accounts have been utilized unilaterally by Yusuf, without agreement from Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. Tr. 76:5-82-9, Jan. 25, 2013; Pl. Ex. 15, 16.

See Exhibit 2 to the Motion at page 11, ¶ 38 (footnote omitted). Nothing in that Order or any other Order of the Court finds or rules that Hamed has a valid claim for recovery of the \$504,591.03 addressed in this claim.

Hamed repeatedly misrepresents that all of the \$504,591.03 at issue represents fees paid to Fuerst Ittleman “for defending this case.” See Motion at page 2 (emphasis in original). See also Motion at page 3 (“In short, a total of \$ 504,591.03 was paid for Yusuf’s personal defense of this case *after* the complaint here was filed. **These were fees paid to Attorney DiRuzzo’s firm for work in this case**, which have been submitted to the Court on several occasions and are attached here as **Group Exhibit 3** for the ease of the Master’s reference.”) (emphasis in original). Hamed essentially asks the Master to take his word that all of these fees were paid in the defense of “this” case, i.e., the captioned action. The only evidence that Hamed provides the Master is Group Exhibit 3, which consists of a list of payments and copies of checks. No invoices whatsoever are provided that describe the work performed to generate these payments.

The reason Defendants have submitted that discovery is necessary with respect to this claim is the fact that the actual invoices reflect that much of the \$504,591.03 was paid for Fuerst Ittleman’s defense of the “Criminal Action” referenced in the Court finding quoted above. Indeed, the very first payment listed on Group Exhibit 3 to the Motion in the amount of \$15,067.26 paid by check no. 3979 was for work performed from August 6, 2012 through September 28, 2013 exclusively in the Criminal Action. See invoices attached as **Exhibit 2**. Defendants submit that substantially all of the other payments listed in Group Exhibit 3 to the Motion include work performed in the Criminal Action. Accordingly, discovery will clearly be required to allocate what

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portion of the work included in the claim was for defending “this” action and what portion was properly charged to the Partnership for defending the Criminal Action.

In their Bench Memo, Defendants argued that Hamed’s claims regarding accounting and attorneys’ fees paid in the Criminal Action (identified as items 10 and 12 on the list set forth on page 2 of the Master’s Order of December 4, 2017) “should be removed from that list because further discovery is required for each of the matters described in those items.” *See* Defendants’ Bench Memo at p. 4 and Exhibit A to that Bench Memo at p. 7, n. 36 and 37. In Hamed’s Response to the Bench Memo, he concedes that discovery is required regarding “Wally’s payment of criminal fees (approx. \$300,000)” (item 10 at page 2 of the Master’s December 4 Order) and “Attorney and accounting fees paid by the partnership in the criminal case” (item 12 at page 2 of the Master’s December 4 Order). *See* Response at p. 2, item 5, and p. 3 at comment to footnote 36 (“Agree to discovery.”). Discovery is clearly needed with regard to all fees paid by the Partnership, including the \$504,591.03 at issue in this claim.


For all the foregoing reasons, Defendants respectfully request the Master to deny the Motion and to provide such further relief as is just and proper.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: January 9, 2018

By:

  
\_\_\_\_\_  
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St. Thomas, VI 00804  
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Attorneys for Fathi Yusuf and United Corporation

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AND FEUERZEIG, LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of January, 2018, I caused the foregoing document, which complies with the page and word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere electronic filing system:

Joel H. Holt, Esq.  
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The Honorable Edgar D. Ross  
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# **EXHIBIT 1**

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED, by his	)	SX-12-CV-370
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.,	)	
	)	
Additional Counterclaim Defendants.)	)	
	)	

**December 15, 2017**  
Kingshill, St. Croix

The above-entitled action came on for Status Hearing before the Special Master in Courtroom Number 211.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

TRACY BINDER, RPR  
Official Court Reporter  
(340) 778-9750 Ext. 7151

1           that we can look from now and expect a final date  
2           or await decisions on the issues.

3           The purpose of calling you here today is to  
4           see if the parties can reach some agreement on all  
5           the issues and present it to the Court. Before we  
6           had a reporter, I intended to ask the parties to  
7           submit to me what they believe to be the time frame  
8           for discoveries and addressing all the issues you  
9           may have, a stipulation that I would approve. But  
10          we can put it in the record and I will incorporate  
11          it in an order.

12          So who wants to go first in identifying those  
13          issues we can agree upon, and their limited time  
14          frame, notwithstanding my order?

15          Go ahead.

16          MR. HOLT: Your Honor, Joel Holt for  
17          plaintiff. First off, when they say they want to  
18          do discovery on an item, we take the position that  
19          we don't have veto power over that, so that's why  
20          we just agreed to take them off the list. It isn't  
21          like we necessarily believe it's needed, but if  
22          they say it's needed, we can't veto that.

23          So it would seem to me that the items that we  
24          can brief by January 12 would be 1, 4, 6, 7, 8, 9,  
25          and 11, since those are the items that we suggested



# **EXHIBIT 2**



**FUERST ITTLEMAN  
DAVID & JOSEPH PL**

October 3, 2012

Invoice No: 09341

Page # 1

Fathi Yusuf  
United Corporation  
4-c & 4-D Estate Sion Farm  
Christiansted,, VI 00820

**Matter # YUSUF, FATHI 2012-1**

**Matter Reference: YUSUF, FATHI (United Corp. STX) 2012-1 Tax Litigation**

**Total Amount Due \$ 15,067.26 includes prior due balance**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
9/07/2012	JAD	Document preparation draft notice of appearance; Telephone Call to with Nizar regarding case	0.50	\$350.00	\$175.00
9/10/2012	JAD	Document preparation draft letters to Holt, Hendrickson, and Soluri; Telephone Call to with Nizar and Mr. Yusuf; Finalize letters and email	1.00	\$350.00	\$350.00
9/11/2012	JAD	Email to/from Joel Holt; Emails to/from Nizar; Telephone Call to with Soluri; Review draft correspondence from Holt; Review draft correspondence from Nizar, provide comments.	2.00	\$350.00	\$700.00
9/13/2012	JAD	Email to/from Mike Yusuf regarding case and removal of prior attorneys; Review letter to Holt from Nizar; Edit letter to Holt and resent to Nizar; Email to Ron Soluri	1.10	\$350.00	\$385.00
9/14/2012	JAD	Review Sept. 13 letter from Andreozzi; Telephone Call to with Nizar regarding Andreozzi letter; Draft response to Andreozzi letter; review emails from Cole and Alkon regarding stipulation of counsel; Emails to/from Hank	2.50	\$350.00	\$875.00
9/15/2012	JAD	Telephone conference with Hank, Nizar, and Ron regarding schedules for criminal tax case; TC with Nizar after conference call	0.70	\$350.00	\$245.00
9/18/2012	JAD	Review draft letter from Nizar to J.Holt; Review correspondence from P.Colon	0.30	\$350.00	\$105.00
9/21/2012	JAD	Document preparation draft stipulation of substitution of counsel for Alkon and Cole; Email to Alkon and Cole; Execute and file	0.80	\$350.00	\$280.00
9/27/2012	JAD	Document preparation draft letter to joint defense team; Draft letter to RSoluri regarding engagement; Conf with Mitchell Fuerst regarding case and engaging accountants	1.00	\$350.00	\$350.00
9/28/2012	MSF	Review pre trial orders for basis for Federal Court jurisdiction	1.50	\$500.00	\$750.00
<b>Fee Subtotal</b>					<b>\$4,215.00</b>
<b>In-House Administrative Charge</b>					<b>\$210.75</b>

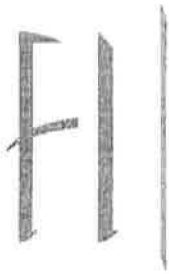
Fuerst Ittleman David and Joseph, PL  
1001 Brickell Bay Drive 32nd Floor Miami Florida 33131  
Telephone 305 350 5690 Facsimile 305 371 8989

**FY 015029**

	<b>Total Fees</b>	<b>\$4,425.75</b>
<b>Total New Charges</b>		<b>\$4,425.75</b>
<b>Previous Balance</b>		<b>\$10,641.51</b>
<b>Balance Due</b>		<b>\$15,067.28</b>
<i>Invoices are due upon receipt. Your prompt payment will be greatly appreciated.</i>		
<b>New Balance of Fund Account</b>		<b>\$7,500.00</b>

**Staff Summary**

<b>Name</b>	<b>Hours</b>	<b>Rate</b>	<b>Fees</b>
Joseph A DiRuzzo	9.00	\$350.00	\$3,638.25
Mitchell S Fuerst	1.50	\$500.00	\$787.50



FUERST ITTLEMAN  
DAVID & JOSEPH PL

September 11, 2012

Invoice No: 09242

Page # 1

Fathi Yusuf  
United Corporation  
4-c & 4-D Estate Sion Farm  
Christiansted,, VI 00820

Matter # YUSUF, FATHI 2012-1

Matter Reference: YUSUF, FATHI (United Corp. STX) 2012-1 Tax Litigation

Total Amount Due \$ 10,641.51 includes prior balance

Date	Staff	Description	Hours	Rate	Charges
8/06/2012	JAD	Telephone conference with N.Dewood regarding case; Telephone Call to with N.Dewood, client, and HSmock	0.80	\$350.00	\$280.00
8/07/2012	CMD	Review emails from Joe	0.10	\$400.00	\$40.00
8/10/2012	CMD	Conference with Joe; Conference with Joe and MSF; review of file materials.	1.50	\$400.00	\$600.00
8/10/2012	JAD	Email to/from NDewood; Review complaint; Conf with C.David regarding complaint; Review letter from NDewood to MFuerst; Conf with Mitchell Fuerst and CDavid in respect to factual background of case, plea agreement, potential Tampa lawsuit and issues; Email to NDewood regarding potential Tampa case	3.30	\$350.00	\$1,155.00
8/10/2012	MSF	Meeting with Joseph DiRuzzo and Chris David on case structure and issues to resolve	1.00	\$500.00	\$500.00
8/12/2012	MSF	Work on file, legal research, review documents, analysis of legal positions	3.50	\$500.00	\$1,750.00
8/13/2012	JAD	Discuss with Mitchell Fuerst regarding case; Email Nizar regarding timing	0.30	\$350.00	\$105.00
8/15/2012	JAD	Telephone conference with NDewood, and MYusuf regarding notice of withdrawal; Telephone Call to with Nizar regarding Coral Gables cond5	0.50	\$350.00	\$175.00
8/16/2012	JAD	Discuss with Mitchell Fuerst regarding plea agreement	0.50	\$350.00	\$175.00
8/17/2012	JAD	Telephone conference with MSF, Nizar, Mike Y. and Fathi Y. regarding criminal case	1.00	\$350.00	\$350.00
8/17/2012	MSF	Telephone call with client and Fathi and Mike Yusuf	0.75	\$500.00	\$375.00
8/17/2012	MSF	Prepare for meeting	1.25	\$500.00	\$625.00
8/21/2012	MSF	Work on case with Chris David and Joseph DiRuzzo	0.50	\$500.00	\$250.00
8/27/2012	JAD	Telephone conference with Nizar, Fathi, and Mike regarding case; Review TRO	0.70	\$350.00	\$245.00
8/28/2012	JAD	Review emails from Gordon Rhea and Nizar	0.30	\$350.00	\$105.00

Fuerst Ittleman David and Joseph, PL  
1001 Brickell Bay Drive 32nd Floor Miami Florida 33131  
Telephone 305 350 5690 Facsimile 305 371 8989

FY 015031

8/29/2012	JAD	Email to/from Mark Daly; Emails to Nizar; Conf with Mitchell Fuerst regarding availability for teleconf	1.00	\$350.00	\$350.00
8/30/2012	JAD	Email to/from DOJ tax, Telephone Call to with Nizar; Conf with Mitchell Fuerst regarding conf call	0.60	\$350.00	\$210.00
8/30/2012	MSF	Prepare for Conference with Department of Justice	2.75	\$500.00	\$1,375.00
8/31/2012	MSF	Prepare for conference; Review court of appeals decisions	0.75	\$500.00	\$375.00

Fee Subtotal	\$9,040.00
In-House Administrative Charge	\$452.00

Total Fees \$9,492.00

Total New Charges \$9,492.00

Previous Balance \$15,638.29

8/08/2012	Payment	3106		\$-6,988.78
	Thank you for your payment			
8/13/2012	Payment	3107		\$-7,500.00
	Thank you for your payment			

Total Payments and Credits \$-14,488.78

Balance Due \$10,641.51

Invoices are due upon receipt. Your prompt payment will be greatly appreciated.

New Balance of Fund Account \$7,500.00

**Staff Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Fees</u>
Christopher M David	1.60	\$400.00	\$672.00
Joseph A DiRuzzo	9.00	\$350.00	\$3,307.50
Mitchell S Fuerst	10.50	\$500.00	\$5,512.50