

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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD 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,*

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**HAMED'S REPLY AS TO  
CLAIMS Y-6, Y-7 and Y-9 -- UNITED'S CLAIMS THAT VIOLATE THE SOL**

For the purpose of this motion, it is assumed that Claims Y-6, Y-7 and Y-9 are Claims of the landlord, United Corporation, even though Hamed believes these are really partnership claims barred by the “Laches” opinion. Each of these claims (attached to Yusuf’s motion as exhibits G, H and I (also attached to Hamed’s motion as D, E and G) are still not recoverable even if they belong to United, as they are barred by the applicable statute of limitations (“SOL”).

In this regard, in his opposition memorandum, Yusuf does not contest the fact that:

- 1) the applicable statute of limitations for the collection of these debts is six years;
- 2) each of the debts identified in Yusuf Exhibits G, H and I all predate September 12, 2012 (the date the parties agree this complaint was filed for the purpose of triggering the SOL), **by over 12 years;**<sup>1</sup>

Thus, all of these claims are at least 6 years late in filing, so that they are barred by the agreed upon SOL.

In response, Yusuf argues that he can explain why these time barred claims are still ripe. First, he attaches (as Exhibit A to his motion) a declaration dated August 12, 2014, in support of his argument that these claims are not time barred, but that declaration deals with past due rent, not any of these three claims, none of which are for past rent. Thus, this irrelevant declaration is not sufficient to defeat this SOL motion on these three items.

Yusuf then argues that the same theory advanced in the “rent declaration” will be relied upon by Yusuf to explain why the SOL has not run based on the fact that in October of 2001 the black book (Yusuf Exhibit G) and the ledger (Yusuf Exhibit H) were seized, somehow tolling the SOL. However, the SOL for all of these claims expired by August of 2001, except a claim for \$3000 in May of 1998 in Exhibit H. Thus, this seizure, which

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<sup>1</sup> As those attached documents show, Exhibit G involves claims in 1994, Exhibit H has five entries from 1994, three in 1995 (between May and August) and one in May of 1998 All illegible), and the entries in Exhibit I are all in 1996.

August of 2001, except a claim for \$3000 in May of 1998 in Exhibit H. Thus, this seizure, which occurred after August of 2001, does not revive the claims in Exhibits G and H, except for possibly this one \$3000 claim in Exhibit H (if the seizure of the document is even a basis for tolling the SOL in the first place). As for Exhibit I, no claim was made that this document was seized by the feds in 2001, so that argument does not save the items in Exhibit I from being barred by the SOL.

Finally, Yusuf argues that this Court should just allow these claims because Judge Brady allowed the past due rent claims for the Plaza Extra East premises (Bay #1) back to 2004 in his April 27, 2015, "Rent Order." However, on July 24, 2017, this Court refused to extend that ruling regarding Bay #1 to other claims for rent for different locations. See excerpt attached as **Exhibit 1**. Thus, there are no such rulings that apply to these claims, or permit them. To the contrary, Mohammad Hamed never acknowledged these three United claims were valid or could be paid at anytime, as the Court found he had expressly done for the past due rent on Bay #1.

Indeed, 5 V.I.C. §39 requires claims to extend the SOL to be in writing:

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby....

In short, these alleged oral agreements do not extend the statute of limitations. Indeed, the fact that Mohammad Hamed is now deceased explains why such statutes must be strictly construed, since he is not alive to now refute Yusuf's self-serving claims of their alleged prior agreements.

In summary, the statute of limitations has run on all of these claims asserted by United, so they should be stricken now.

**Dated:** January 17, 2018



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

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

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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



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

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED  
Plaintiff/Counterclaim Defendant,

v.

FATHI YUSUF and UNITED CORPORATION,  
Defendants/Counterclaimants,

v.

WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,  
Counterclaim Defendants.

Civil No. SX-12-CV-370

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

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,

Plaintiff,

v.

UNITED CORPORATION,  
Defendant.

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,

Plaintiff,

v.

FATHI YUSUF,  
Defendant.

Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING**

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.<sup>1</sup> Because the Court concludes that Defendant Yusuf has not, in fact, presented

<sup>1</sup> Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.



Yusuf's Counterclaim, each partner has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. § 75(b)(2)(iii). However, Count XII of Defendants' Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent. The Court first considers Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations as it applies to United's action for rent, and then as it applies to the partners' competing claims for dissolution, wind up, and accounting.

United's Cause of Action for Debt (Rent)

By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds the total amount of \$5,234,298.71 plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.

In Count XII of Defendants' Counterclaim, United seeks an award of \$793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay 1 (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument

with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.

However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bays 5 and 8] other than on a temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed ¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.<sup>5</sup>

<sup>5</sup> Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.

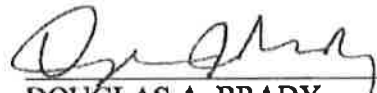
In light of the foregoing, it is hereby

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.

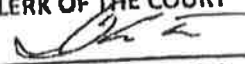
  
DOUGLAS A. BRADY  
Judge of the Superior Court

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 EG