

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,
MUFEED HAMED, HISHAM HAMED,
AND PLESSSEN 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 on Hamed's motion to deny United Claims Y-6, Y-7, and Y-9¹ due to applicable statutes of limitations. United filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed argued that since the statute of limitations for actions for debt, breach of contract, and conversion of property is 6 years under Title 5 V.I.C. § 31(3), United Claims Y-6, Y-7, and Y-9 should be denied and stricken due to the applicable statutes of limitations. United Claim Y-6 is based on a 1994 reconciliation of entries made in a black ledger book (hereinafter "Black Book") that allegedly left a balance due to United (Motion, Exhibit D)²; United Claim Y-7 is based on entries in another ledger book that allegedly show a balance due to United for the various Partnership expenses United paid for in 1994, 1995, and 1998 (Id., Exhibit E)³; United Claim Y-9 is based on a list of allegedly unreimbursed transfers of money by United to the Partnership in 1996 (Id., Exhibit G)⁴.

In its opposition, United pointed out that "Hamed's argument ignores extensive briefing on the statute of limitations that United made in connection with... [past due] rent" because "[i]n that briefing, which was supported by two declarations of Yusuf, United gave a number of reasons why the statute of limitations was no bar to rent claims covering the period 1994 to 2004." (Opp., p. 2) United further pointed out that "Judge Brady relied on some of those arguments...when he rejected Hamed's statute of limitations defense and ordered payment to United of past due rent for the 1994 to 2004 time period..." (Id.) In support of its opposition, United attached a declaration of Yusuf, dated August 12, 2014 (hereinafter "August 12, 2014

¹ The Master was appointed by the Court to "direct and oversee the winding up of the Hamed-Yusuf Partnership" (Sept. 18, 2015 order) and "make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination." (January 7, 2015 order) The Master finds that that United Claims Y-6, Y-7, and Y-9 fall within the scope of the Master's report and recommendation given that United Claims Y-6, Y-7, and Y-9 are alleged debts owed by the Partnership to United.

² The same exhibit was attached to United's opposition as "Exhibit G."

³ The same exhibit was attached to United's opposition as "Exhibit H."

⁴ The same exhibit was attached to United's opposition as "Exhibit I."

Yusuf Declaration”), whereby Yusuf declared under the penalty of perjury that “[u]nder the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses” and that “[u]nder our agreement, I was the person responsible for making all decisions regarding when the reconciliation would take place.”⁵ (August 12, 2014 Yusuf Decl., p. 2) United argued that “[c]onsistent with Yusuf’s declarations submitted in Defendants’ briefing on the statute of limitations defense asserted in connection with the rent claim, the evidence will show that Yusuf and Hamed agreed that any Partnership expenses advanced by United from revenues earned in rents paid by third party tenants for space at the United Shopping Center would be reconciled with the Partnership whenever Yusuf in his exclusive discretion determined that they should be reconciled” and that “Hamed understood and agreed that United would not be entitled to reimbursement for those expenses until Yusuf determined that it made economic sense for the supermarket business to make that reimbursement.” (Id., p. 4) Yusuf further argued that “even if he had been inclined to declare reimbursement for United’s advances due at an earlier time, the pendency of the criminal case precluded him from doing so until late 2011” because “all of the Plaza Extra accounts were frozen by an injunction entered contemporaneously with the filing of the criminal case in September 2003” and “both the Black Book and the ledger had been seized by the FBI in the October 2001 raid...which made calculations of the amounts owed to United very difficult.” (Id.) Moreover, Yusuf also argued that “[t]hus, even apart from the fact that Yusuf never exercised his exclusive authority to declare these advances due and payable until after the instance case was brought, the doctrine of equitable tolling would apply because he was prevented by extraordinary circumstances

⁵ The August 12, 2014 Yusuf Declaration was the declaration United attached to its prior briefing on the statute of limitations defense asserted in connection with the past due rent for Bay #1. (Opp., fn. 1)

from doing so until late 2011.” (Id., at p. 5) As such, Yusuf concluded that “[t]his agreement between Hamed and Yusuf means that the debts did not accrue for statute of limitations purposes until Yusuf determined that they should be paid (i.e., when he filed his counterclaim in the instant case), and that Hamed’s reliance on the statute of limitations defense as to the claims at issue in the Motion to Strike is without merit.” (Id.)

In his reply, Hamed incorrectly pointed out that the August 12, 2014 Yusuf Declaration “deals with past due rent, not any of these three claims...[t]hus, this irrelevant declaration is not sufficient to defeat this SOL motion on these three items.” (Reply, p. 2) Furthermore, Hamed pointed out that “the SOL for all of these claims expired by August of 2001, except a claim for \$3000 in May of 1998 in Exhibit H [to United’s opposition]” and thus, the FBI seizure “which occurred after August of 2001, does not revive the claims in Exhibits G and H [of United’s opposition], except for possibly this one \$3000 claim in Exhibit H [of United’s opposition] (if the seizure of the document is even a basis for tolling the SOL in the first place).” (Id., p. 2-3) Moreover, as for United Claim Y-9 for unreimbursed transfers of money by United to the Partnership in 1996 (Motion, Exhibit G; Opp., 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.” (Id., p. 3) Finally, Hamed pointed out that the Court, in its July 24, 2017 memorandum opinion and order, directed the Partnership, inter alia, to pay United for past due rent with regard to Bay #1 from 1994 to 2004, but “refused to extend that ruling regard Bay #1 to other claims for rent for different locations” and that **“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.”** (Id.) (Emphasis added) Thus, Hamed argued that “the statute of limitations has run on all of these claims asserted by United, so they should be stricken now.” (Id.)

Based on the foregoing, it is evident that genuine issues of material fact exist as to whether the statute of limitation should be equitably tolled as to United Claims Y-6, Y-7, and Y-9. As such, the Court will deny Hamed's motion to deny United Claims Y-6, Y-7, and Y-9 due to applicable statutes of limitations at this juncture. Accordingly, it is hereby:

ORDERED that Hamed's motion to deny United Claims Y-6, Y-7, and Y-9 due to applicable statutes of limitations is **DENIED WITHOUT PREJUDICE**.

DONE and so **ORDERED** this 7th day of February, 2018.


EDGAR D. ROSS
Special Master