**THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
| vs.  **FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*.  vs.  **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2014-CV-287** |
|  |  |
| *Plaintiff*,  vs. | **ACTION FOR DECLARATORY**  **JUDGMENT** |
| **UNITED CORPORATION,** | JURY TRIAL DEMANDED |
| *Defendant.*  *­­­­­­*­­  **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED,  *Plaintiff,*  vs.  **FATHI YUSUF**,  *Defendant.* | Consolidated with  **Case No.: SX-2014-CV-278**  **ACTION FOR DEBT AND CONVERSION**  JURY TRIAL DEMANDED |
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**HAMED'S OPPOSITION**

**TO YUSUF'S MOTION**

**TO SOMEHOW MAGICALLY MAKE 117 HAMED CLAIMS JUST DISAPPEAR**

**I. Introduction**

Yusuf seeks to make 117 Hamed Claims simply 'disappear' with no factual inquiry, no briefing and no substantive determination of their individual validity.[[1]](#footnote-1) Because of the extremely unusual nature of what Yusuf proposes as to *two-thirds* of Hamed's issues, with no reference to the applicable statute, it is important to briefly review *what this proceeding is*. This is the "winding up" process of a partnership—expressly being done pursuant to the *Revised Uniform Partnership Act* ("RUPA" or "the Act"), 26 V.I.C. §§ 1-274. See "Order Adopting Final Wind Up Plan", January 9, 2015. ("**wind up** and liquidate the Partnership in the manner provided herein and **as required by the Act**.[[2]](#footnote-2)) In turn, the Act is specific as to the "winding up" process—a defined term described in RUPA *Section VIII* "Winding up Partnership Business," §§ 171-177.

**II. The Act Requires that All Claims that the Partnership is owed Money**

**It can Recover Before Dissolution be Heard and Decided**

The most central, longest-lasting and easiest to understand concepts of RUPA and all prior versions of the UPA are the that each partner has an "account", that at the end of any RUPA partnership there *must* be an evaluation of the calculated value of these accounts, and that to do so, the partners can make their case as to any amounts which must be credited to or recovered by the Partnership. See 26 V.I.C. § 177(b) "Settlement of accounts and contributions among partners". ("Each partner is *entitled* to a settlement of ***all*** partnership accounts upon winding up the partnership business.")This does not say "just claims of a certain size", or "only claims that were phrased using specific terms"; nor does a partner have to do anything else to be entitled to this. Thus, at the end of a RUPA partnership, one of the automatic questions that must always be asked and answered, is: "What do the partnership's *books* show as the value of a partner's account, and are they accurate?" Hamed can locate no RUPA case law in any jurisdiction that allows certain issues as to a partner's account, once raised, to simply be 'ignored'. To the contrary, the RUPA case law makes it clear that it is impossible to wind up a RUPA partnership without the determination and calculation of all questioned accounting transactions in the books.[[3]](#footnote-3)

A formal account or (as it is sometimes called) an accounting is more than a presentation of financial statements. It encompasses **a review of all transactions, including alleged improprieties, which should be reflected in the financial statements**. It resembles a trustee's accounting.

If a partner asks his co-partners for an account and does not get it, or is not satisfied with it, he may bring an action for an accounting. **This is a *comprehensive* investigation of transactions of the partnership and the partners**, and **an adjudication of their relative rights**. It is conducted by the court or, more commonly, by an auditor, referee or master, subject to the court's review. Equitable throughout most of its long history, this action is well adapted to the complexity of partners' relations. But **its origins lie in the mutual fiduciary obligations of the partners**. . . .[and is] *designed to produce and evaluate* ***all testimony relevant to the various claims of the partners****.*” (Emphasis added in original, quoting Crane & Bromberg, Law of Partnership (1968), chapter 7, § 72, p. 410). (Emphasis added.)

*Jacob v. Bald Mountain W.*, No. 312390, 2014 WL 4854309, at \*2 (Mich. Ct. App. Sept. 30, 2014); *see also* *Pankratz Farms, Inc. v. Pankratz*, 2004 MT 180, ¶ 53, 322 Mont. 133, 146, 95 P.3d 671, 681, 2004 WL 1559728 ("to wind up a partnership's affairs, the court is obligated to provide ‘for a full accounting of the partnership assets and obligations and distribution of any remaining assets or liabilities to the partners in accordance with their interests in the partnership.’”; *accord*. *Ferguson v. Holmes*, No. A-08-442, 2009 WL 306314, at \*9 (Neb. Ct. App. Feb. 10, 2009) (criticizing the partnership wind-up accounting below "because the court did not provide a detailed statement setting forth the manner in which it *calculated* the balance of the parties' capital accounts...." requiring a full, detailed accounting review *de novo*.) If a partnership's bookkeeper made an entry, it can be examined and to be deemed valid it *has* to be backed up by documentation: More so if one partner benefited from that entry.

To insure this necessary analysis of his Partner account and those bookkeeping entries, Hamed hired two highly reputable CPA firms—one on St. Croix which specializes in USVI entities, and one with an international practice. After an *extensive* year-long analysis of the partnership books by actual on-site accounting reviews, real-world testing of account records and many in-person interviews (none of which Yusuf's accountant BDO did) an Expert Report was issued. See **Exhibit 2**, *Declaration of CPA* at ¶¶ 5-10. That Expert Report was based on accounting procedures as described in U.S. Statements on Auditing Standards (SA) AU Section 500, and it listed the applicable accounting standards for each claim individually. The facts and documents are individually set out, claim-by-claim, for each claim. *Id*.

The CPAs originally identified more than 450 exceptions to the books of this Partnership. With subpoenas and extensive research these have already been pared down to 165 items that they found to be exceptions. These items have been presented to the Special Master as the 165 "Hamed Claims" in Hamed's Revised Claims. *Id*. at ¶¶ 8-15.

There is no way, as much *as every partner responsible for a partnership's books would like to do so*, to make *any* arguably valid claim asserted in this process "magically disappear." There is no such thing as a claim that is "too small" to be heard—because one simply *cannot* calculate the value of the partnership share, as required by the Act, without hearing all of the potentially valid winding-up issues. *Id*. at ¶ 15-17. *This is particularly true as to claims that go to the accounting practices where one partner kept the books.* One would think that this is even more true here, where the Court had to enter orders to open the accounting process after Judge Brady found the accounts were improperly unilaterally controlled by Yusuf.[[4]](#footnote-4)

Similarly, there is no distinction in the Act between items that are called "questions" or "problems" with the partnership's accounting as opposed to ones labeled "claims". *Id*. at ¶ 18. Again, the Act requires that *all accounts* be correctly determined and then the partner's share calculated. There is no RUPA process of deciding to just not hear some of the issues identified. If Yusuf paid himself or United funds they were not entitled to, or paid vendors for the benefit of East—and thus he cannot show that a particular accounting entry was legitimate through documents—the amount must be recovered by the Partnership**.** *Id*. at ¶¶ 18-20.

**3. The Parties Have Already Agreed to a Fast, Simple Means to Deal with These Claims**

**and Hamed has Agreed to Pay 100% of the Cost of Doing the Analysis**

In the stipulated *Joint Discovery Plan*, as agreed to and signed by the Special Master on January 29, 2018, there is a simple, efficient process already set out specifically to deal with just these accounting items. **When it was negotiated, Hamed agreed to pay 100% of the cost of Mr. Gaffney doing this limited, specific, well-described analysis**. The $150/hour is exactly what Mr. Gaffney requested, and was not reduced one-cent by Hamed.

1. Mr. Gaffney will be paid by Hamed at the rate of $150.00 per hour for the time he works, set forth in a contemporaneous kept timesheet for answering he [accounting] items in this "Section A". Mr. Gaffney will submit daily emails to counsel for Hamed informing them of the hours worked and what was done. Unless counsel or Hamed disapproves the work by the end of the following day, Mr. Gaffney will continue the work, if it is disapproved, the Master will be consulted for a decision before work resumes. These emails will then form the basis of weekly billings that shall be paid within one month of receipt of same.

2. For each of the Hamed Claims numbered H-41 to H-141, which survive the Motion, John Gaffney will provide a written response, in his fiduciary capacity as the Partnership Accountant, to the following two items:

a. *Interrogatory*: Provide a written statement describing the transaction, with reference to when the actual activity or delivery occurred, who the persons/entities are, what amounts were involved, and whet it was for (with reference to why the funds are allegedly properly charged to the Partnership) and making reference to any checks, invoices or other relevant documents.

b. *Production of Documents*: Attach to the above interrogatory response, the documents referenced in your response.

\* \* \* \*

4. Hamed shall have a total of 14 hours to depose Mr. Gaffney. . . .

5. The written portion. . .will be completed by Mr. Gaffney by July 31. . .

**III. The Claims are Each Specific, Well-Documented and Accompanied by Information**

As another part of the *Joint Discovery Plan*, Hamed provided Yusuf 146 pages of individual, explicit, detailed descriptions of the claims, on a claim-by-claim basis. This included descriptions of all claims, each with: new and old claim numbers, all information and documents identified as to each claim, all responses previously received from Mr. Gaffney or Yusuf, and the CPA-noted deficiencies. Moreover, *all* of this information has been in Yusuf's hands, *verbatim*, for more than a year—except the new claim numbers.

**IV. It is Impossible to Argue the 117 Claims Here in Five Pages**

Hamed cannot argue the validity of each of these 117 claims here—but asks the Master to consider just the first three challenged as examples. Claim H‐41 involves payments to Caribbean Refrigeration & Mechanical of $ 95,420 that Hamed believes were solely for United or Seaside. H‐42 was a purchase of plastic bags from Miadden Plastic that Hamed and his CPAs believe were for the East Store only—$ 49,565. H-43 is thought to be Yusuf's collection of a settlement and keeping it rather than splitting it—another $42,970.

**V. Conclusion**

Yusuf confuses the polite accounting phrasing of "unclear" or "unsupported" accounting ledger entries with what that really means**—**that it appears Yusuf intentionally or erroneously used funds from the Partnership for his and United's benefit. *Id*. at ¶ 20. These are not delicate "questions" or "maybe claims." Either the East Store got and used those plastic bags for which the Partnership paid, or it did not, this is *not* a complex a series of issues. This is basic claims accounting. Yusuf is attempting to argue about these many claims in just 5 pages, *en masse,* to avoid having to address and discuss the specific facts.

**Dated:** February 15, 2018 A

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**CERTIFICATE OF SERVICE**

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e), and that on this 15th day of February, 2018, I served a copy of the foregoing by email (Via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross (with 2 Hard Copies by Mail)**

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1. Yusuf lists the 101 claims from H-41 through H-141 and an additional 16 other claims (*see* **Exhibit 1,** with value of each claim listed) totaling 117 claims. [↑](#footnote-ref-1)
2. That same Order provides, in Section 1, "DEFINITIONS 1.1 'Act' means the Uniform Partnership Act, V.I. Code Ann. tit. 26, §§ 1 -274." [↑](#footnote-ref-2)
3. Yusuf tries to re-cast this as something other than an accounting for winding up—not an examination of the books for erroneous or wrongful payments for the benefit of Yusuf or United, but rather (what he calls in his argument): the far more limited exclusion of "*questions [that] relate to "unclear ledger entries, which benefit Hamed, and thus, are not claims against Yusuf*." Nonsense. When a partner controls the books and is the Liquidating Partner too, money paid out without adequate explanation and documentation, whether intentional or in error, *IS a claim that must be determined*. While it is true that recovery of wrongfully paid out funds may benefit Hamed, the point here is that under RUPA a proper accounting not only benefits the partnership as a whole, but is also *required*. [↑](#footnote-ref-3)
4. See the Court's Orders dated April 25, 2015 and May 31, 2013. [↑](#footnote-ref-4)