

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 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 motion to compel responses to three requests to admit. In response, Yusuf filed an opposition and Hamed filed a reply thereafter. Parties also filed a joint stipulation as to stay of discovery responses from Yusuf and request for expedited determination of Hamed’s motion to compel.<sup>1</sup>

In his motion, Hamed stated that he served, *inter alia*, three requests to admit on January 30, 2018, pursuant to Parties’ joint discovery and scheduling plan (hereinafter “Discovery Plan”). (Motion, p. 2-3) Hamed further stated that, although Yusuf responded to all three requests, the responses are “grossly deficient and intentionally avoid answering—so much so that they violate the requirements for responding to discovery contained in the applicable rules.” (Id., at p. 3) Hamed also stated that counsels for Parties met and conferred but Yusuf’s counsel declined to amend his responses the three requests. (Id.) Accordingly, Hamed sought to have the Master either deem the three requests to admit as admitted or order Yusuf to respond according to the Virgin Islands Rules of Civil Procedure. (Id., at p. 10)

In his opposition, Yusuf argued that “[t]his discovery dispute ultimately stems from the failure of Mohammad Hamed and his son, Waleed, as executor of his estate to pursue an accounting when he had the opportunity, prior to the submission of his purported accounting claims” and thus, “[a]s a result, Hamed never determined whether he had actual accounting claims.” (Opp., p. 2) Yusuf further argued that, although Parties agreed to limit accounting claims to Hamed Claim Nos. H-41 to H-141 in the Discovery Plan, Hamed intended “all along to ask Yusuf the balance of his accounting questions on claims outside that designation, which Yusuf could not answer without seeking information from Gaffney – all so that Hamed would not have to pay Gaffney for his time spent responding.” (Id., at p. 3) Accordingly, Yusuf

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<sup>1</sup> The Master will grant Parties’ joint stipulation and request for expedited determination of Hamed’s motion to compel.

requested the Master to either deny the motion to compel “or revise the matters designated for Gaffney responses to include those listed herein.”<sup>2</sup> (Id., p. 14)

In his reply, Hamed pointed out that Yusuf’s opposition failed to respond to “Hamed’s discovery arguments or the law applicable to [Virgin Islands Rules of Civil Procedure] 26 and 36” and that Yusuf did not “actually oppose the discovery arguments in Hamed’s motion by reference to the applicable discovery law.” (Reply, p. 3) Hamed further pointed out that “rather than addressing the law and facts set out in the original motion or the actual language of the Plan, Yusuf[’s opposition] attempts to (1) argue as to why the Court should ignore the Plan’s language, and (2) rather than discuss why his responses satisfy [Virgin Islands Rule of Civil Procedure] 36.”<sup>3</sup> (Id.)

### **DISCUSSION**

Rule 36 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 36”) governs the scope and procedure for requests for admission. Rule 36(a)(6) provides that, “[o]n finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.” The Master will discuss each of the requests and responses thereto addressed by Hamed in his motion.

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<sup>2</sup> In his opposition, Yusuf pointed out that “[w]hile only three Requests to Admit are at issue in this Motion to Compel, a much larger number of Requests to Admit, Interrogatories and Request to Produce are at stake, all of which should have been directed to Gaffney and not Yusuf” and thus, “[t]he Master’s direction is needed as to whether Hamed can seek to circumvent the parties’ efforts to develop a logical discovery process that matches the request relating to an accounting issue with the person knowledgeable to respond and who should have to pay for Gaffney’s time to respond.” (Opp., p. 4) At this time, the Master will only address the three requests to admit addressed in Hamed’s motion to compel. Parties may file additional motions as to the other discovery issues not raised in Hamed’s motion to compel.

<sup>3</sup> In his reply, Hamed did not make additional arguments as to his three requests to admit. Instead, Hamed mainly addressed issues raised in Yusuf’s opposition that are outside the scope of the three requests to admit addressed in his motion to compel—such as, Yusuf’s claim that “Hamed’s claims are not really surviving *RUPA* § 71(a) claims which must be determined in a winding up accounting...but, rather, just questions,” Yusuf’s request that the Master amend the Discovery Plan, Yusuf’s request that the Master make a ruling as to all pending claims’ discovery. At this time, the Master will only address the three requests to admit raised in Hamed’s motion to compel. Parties may file additional motions as to the other discovery issues not raised in Hamed’s motion to compel.

## 1. HAMED'S REQUEST TO ADMIT 1.

Hamed's Request to Admit 1: Request to admit number 1 of 50 relates to Claim H-13 (Previously identified as 210) – described in the claims list as “Hamed payment of taxes during criminal case”

Admit or deny that Fathi, Fawzia, Maher, Nejeh, Syaid, Zayed and Yusuf Yusuf's income taxes were paid with Partnership funds for the years 2002-2012, but the Hamed taxes were not paid with Partnership funds.

Yusuf's Response: Yusuf admits that the partnership agreement required that the Yusuf family's personal income taxes as well as United's taxes be paid from the United operating account as members of the Yusuf family were the only individuals claiming for tax purposes any of the income derived from the grocery store operations and such income was recognized by United. None of the Hamed family claimed any of the distributions they received from the Yusuf-Hamed partnership or their income tax returns and thus, incurred no such tax liability for said income. The partnership agreement was for the splitting of net profits after the payment of taxes which would be incurred by United and the Yusuf family members. (Motion, p. 5)

Hamed argued that Yusuf's response is deficient in this instance because it appears that Yusuf only “sort of admit” rather than simply admitting or denying as required under Rule 36(a)(4).<sup>4</sup> (Id., at p. 6)

In his opposition, Yusuf specifically argued that his response as to Hamed's Request to Admit 1 “is proper, in compliance with the rules and explains the basis for the admissions and qualifications.” (Opp., p. 4; *see also*, Id., at p. 12-13) Yusuf further argued that Hamed “had every opportunity to gather the information needed” but Hamed never “undertook to prepare his own Partnership accounting.” (Id., at p. 5) Therefore, Yusuf concluded that “there is no

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<sup>4</sup> Ruled 36(a) provides, in relevant part:

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(4) *Answer*. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

basis to award the relief sought by Hamed and the responses should remain as given.” (Id. at p. 4)

Pursuant to Rule 36(a)(6) and the clear statements in Yusuf’s response wherein he did not deny the factual assertions, the Master will deem Hamed’s Request to Admit 1 as admitted as to the following matters only: (1) Fathi, Fawzia, Maher, Nejeh, Syaid, Zayed and Yusuf Yusuf’s income taxes were paid with Partnership funds for the years 2002-2012; and (2) Hamed taxes were not paid with Partnership funds. No other matters, such as whether the partnership agreement was required to pay Yusuf and Yusuf’s family taxes or Hamed and Hamed’s family taxes, will be deemed admitted under Hamed’s Request to Admit 1.

## **2. HAMED’S REQUEST TO ADMIT 2.**

Hamed’s Request to Admit 2: Request to admit number 2 of 50 relates to Claim H-18 (previously identified as 275) – described in the claims list as “K4C357, Inc. payment of invoices from FreedMaxick.”

Admit or deny that the Partnership did not reimburse KAC357, Inc. for the invoices shown in Exhibit 275, of the Exhibits to JYZ Engagement Report, September 28, 2016, bates numbers...

Yusuf’s Response: Yusuf objects to this Request for Admission as it is properly directed to John Gaffney. Yusuf shows that this Request along with other discovery recently submitted should be directed to John Gaffney and maintain that these items were not included in the original list of Gaffney Items H-41 through H-141 in what appears to be an attempt to circumvent the agreement for John Gaffney to respond to discovery and that payment for his time to be at the expense of the Hamed pursuant to the Joint Discovery and Scheduling Plan. Further responding, Yusuf has no knowledge as to this particular payment by KAC357, any request for reimbursement or the accounting of same and, therefore, can neither admit or deny this Request to Admit.

Hamed argued that Yusuf’s response is deficient in this instance because: (1) the Discovery Plan “does not either allow or require diversion to Mr. Gaffney”; (2) Hamed’s Claim No. H-18 is included in section B of the Discovery Plan, which is to be answered by Yusuf; (3) Mr. Gaffney is not a party here and requests to admit cannot be directed to non-parties

under Rule 36<sup>5</sup>; (4) Mr. Gaffney's admissions cannot be used against United and Yusuf as their admissions; (5) Yusuf is a party and relevant questions can be directed to him pursuant to Rule 26(b)(1)<sup>6</sup>; (6) the fact that it could also be addressed to another witness is irrelevant; (7) as the Liquidating Partner, Yusuf cannot refuse to answer as to Partnership information; (8) Yusuf's "insufficient knowledge" response is not compliant under Rule 36(a)(4);<sup>7</sup> and (9) Yusuf has not been cooperative in allowing Hamed access to the facts and admission. (Motion, p. 7-8)

In his opposition, Yusuf argued that his response to Hamed's Request to Admit 2 is proper. (Opp., p. 12) Yusuf pointed out that Hamed's Request to Admit 2 should be directed to Gaffney instead because "in order to effectively respond to this request, Yusuf would need to engage Gaffney to, among other things, look up the submission and confirm whether a payment was made or whether it was accounted for by another means, such as an off-set." (Id. at p. 8-9) Yusuf further argued that "Hamed's motivation is to seek substantive responses from Gaffney, but to require Yusuf to pay for it." (Id. at p. 9) As such, Yusuf requested "the Msater to address the issue and render a determination as to the discovery that should be directed to Gaffney and how he is to be compensated for his time."<sup>8</sup> (Id. at p. 12)

Here, while Yusuf's asserted lack of knowledge or information as a reason for failing to admit or deny, Yusuf failed to indicate that he "has made reasonable inquiry and that the information [he] knows or can readily obtain is insufficient to enable [him] to admit or deny" as required under Rule 36(a)(4). As such, the Master will order Yusuf to make a reasonable

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<sup>5</sup> Rule 36(a)(1) provides, "A party may serve on any other party a written request to admit..."

<sup>6</sup> Rule 26(b)(1) provides: "Unless otherwise limited by court order the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. Information within this scope of discovery need not be admissible in evidence to be discoverable."

<sup>7</sup> *Supra*, fn. 4.

<sup>8</sup> At this time, the Master will only address the three requests to admit raised in Hamed's motion to compel. Parties may file additional motions as to the other discovery issues not raised in Hamed's motion to compel.

inquiry and serve an amended answer to Hamed's Request to Admit 2 in compliance with Rule 36(a)(4).

### 3. HAMED'S REQUEST TO ADMIT 3.

Hamed's Request to Admit 3: Request to admit number 3 of 50 relates to Claim H-153 (previously identified as 3009a) – described in the claims list as “Partnership funds used to pay United Shopping Center's Property Insurance.”

Admit or deny that after 9/17/2006 the Partnership paid the United Shopping Center's Property Insurance – which included protection for properties other than the Plaza East Store.

Yusuf's Response: Yusuf objects to this Request for Admission as it is properly directed to John Gaffney. Yusuf shows that this Request along with other discovery recently submitted should be directed to John Gaffney and maintain that these items were not included in the original list of Gaffney Items H-41 through H-141 in what appears to be an attempt to circumvent the agreement for John Gaffney to respond to discovery and that payment for his time to be at the expense of the Hamed pursuant to the Joint Discovery and Scheduling Plan.

Further responding, according to the documentation submitted by Hamed, such inquiries were previously directed to John Gaffney who researched the question and provided them the following detailed response:

PE [Plaza Extra] funds paid insurance for the shopping center because that was the agreement between Fathi Yusuf and Mohammad Hamed. The payment of insurance by PE was a 25 year practice.

Hamed argued that Yusuf's response is deficient in this instance because: (1) the Discovery Plan “does not either allow or require diversion to Mr. Gaffney”; (2) Hamed's Claim No. H-18 is included in section B of the Discovery Plan, which is to be answered by Yusuf; (3) Mr. Gaffney is not a party here and requests to admit cannot be directed to non-parties under Rule 36<sup>9</sup>; (4) Mr. Gaffney's admissions cannot be used against United and Yusuf as their admissions; (5) Yusuf is a party and relevant questions can be directed to him pursuant to Rule 26(b)(1)<sup>10</sup>; (6) as the Liquidating Partner, Yusuf cannot refuse to answer as to Partnership

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<sup>9</sup> *Supra*, fn. 5

<sup>10</sup> *Supra*, fn. 6.

information; and (7) Yusuf's "insufficient knowledge" response is not compliant under Rule 36(a)(4)<sup>11</sup>. (Motion, p. 9-10)

In his opposition, Yusuf argued that his response to Hamed's Request to Admit 3 is proper for the same reasons given as to Hamed's Request to Admit 2. (Opp., p. 10-12)

Pursuant to Rule 36(a)(6), the Master will deem Hamed's Request to Admit 3 as admitted as to the following matters only: (1) after September 17, 2006 the Partnership paid the United Shopping Center's property insurance; and (2) United Shopping Center's property insurance included properties other than the Plaza Extra-East store. No other matters, such as whether Fathi Yusuf and Mohammad Hamed had an agreement regarding payment of United Shopping Center's property insurance, will be deemed admitted under Hamed's Request to Admit 3.

Accordingly, it is hereby:

**ORDERED** that Parties' joint stipulation as to stay of discovery responses from Yusuf and request for expedited determination of Hamed's motion to compel is **GRANTED**. It is further:

**ORDERED** that Hamed's motion to compel responses to three requests to admit is **GRANTED**. It is further:

**ORDERED** that, as to Hamed's Request to Admit 1, the following matters are deemed admitted: (1) Fathi, Fawzia, Maher, Nejeh, Syaid, Zayed and Yusuf Yusuf's income taxes were paid with Partnership funds for the years 2002-2012; and (2) Hamed taxes were not paid with Partnership funds. It is further:

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<sup>11</sup> *Supra*, fn. 4.

**ORDERED** that, as to Hamed's Request to Admit 2, Yusuf shall make reasonable inquiry and serve an amended answer to Hamed's Request to Admit 2 in compliance with Rule 36(a)(4). **And** it is further:

**ORDERED** that, as to Hamed's Request to Admit 3, the following matter are deemed admitted: (1) after September 17, 2006 the Partnership paid the United Shopping Center's property insurance; and (2) United Shopping Center's property insurance included properties other than the Plaza Extra-East store.

**DONE** and so **ORDERED** this 12<sup>th</sup> day of April, 2018.

  
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EDGAR D. ROSS  
Special Master