

**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,  
MUFEEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**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**

Consolidated with

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

Consolidated with

**Case No.: ST-17-CV-384**

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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.*

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**FATHI YUSUF,** *Plaintiff,*

vs.

**MOHAMMAD A. HAMED TRUST,** *et al,*  
*Defendants.*

**HAMED'S REPLY RE MOTION FOR LEAVE TO FILE SURRESPONSE  
TO YUSUF'S REPLY IN SUPPORT OF HIS MOTION TO STRIKE HAMED'S  
CLAIMS H-41 THROUGH H-141 AND ADDITIONAL "MAYBE" CLAIMS"**

## 1. Alleged Procedural Error

Yusuf complains that Hamed used the incorrect procedure regarding sur-replies. Hamed apologizes to the Special Master if this was the case—it was certainly not his intent. However, he notes that his motion *was exactly modeled on, and is almost identical in verbiage* to Yusuf's January 25, 2018 "*Motion For Leave To File Surreponse To Hamed's Reply. . . .*" There Yusuf began, at 2:

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully moves the Master to grant him leave to **file this brief Surreponse** to Hamed's Reply. . . .filed on January 19, 2018. . . . (Emphasis added.)

Yusuf argued the substance in the same document where he requested permission to file.

Nor was that the only time in the recent history of this case that Yusuf filed exactly this type of 'motion for a surreponse *with the substance explained.*' To the contrary, it has happened two other times just this year -- a total of three times in 5 months. See Yusuf's (1/25/2018) *Motion for Leave to File Surreponse to Hamed's Reply*; see also Yusuf's (very similar) *Surreponse to the Declaration of Robin Seila*—which also went into the substance of the issue at quite some length; see also Hamed's February 12, 2018, response to that surreponse, noting:

The Defendants [Yusuf/United] requested leave to file a sur-reply to the Robin Seila declaration filed with this Court. **However, the Defendants fail to explain why a sur-reply is needed other than they want to file one.** Hamed takes no position as to the request, as this Court can decide if any further filings to file a sur-reply are needed. . . .(Emphasis added.)

However, the instant motion was intended only to make two brief points that are important enough that Hamed asks that the Master allow the substance of his argument to be considered even if the form was in error: (1) that Yusuf's instant motion is illustrative of his pattern of filing repeated motions with unsupported factual statements/arguments (i.e. with no declarations), where there is no reference in the *initial motions* to the applicable

law at all—electing to deal with his actual legal positions only on reply where they cannot be responded to; and (2) in those replies, Yusuf repeatedly ignores the controlling *law of the case*—the prior, underlying decisions—also making this unreachable for argument.

As to the first point; the initial underlying motion here attempts to argue about the process for winding up of a RUPA Partnership—but does not cite or address RUPA once, nor does it cite Judge Brady's repeated discussions of the applicability of RUPA—or the specific RUPA sections Judge Brady has directed that must be applied. Yusuf's initial motion purportedly deals with the claims process, but does not cite or discuss either RUPA generally or the sections of RUPA that Judge Brady has defined as controlling. **Then in reply, where Hamed cannot respond**, Yusuf makes bald statements about the facts and the Act, and *only then* exposes his position on RUPA--with no opportunity for a response.

## **2. Substance - Ignoring Judge Brady**

As to the second point, Hamed sought to note that (like the instant opposition) Yusuf's reply also attempted to sidestep the applicable RUPA law by ignoring the detailed analyses that Judge Brady has made regarding Hamed's claims being RUPA section 72(a) claims. As Yusuf did not take positions on the applicable law in the initial moving papers, Hamed, therefore, could not address his actual positions in opposition—thus, he made a motion for surresponse just as Yusuf had done.

Finally, Yusuf's tortured reading of Judge Brady's views even now fails to mention much of what has been decided regarding this being a RUPA wind-up process. Although Hamed refuses to further, endlessly respond to Yusuf like this, he does note that Judge Brady had the following to say at pages 9-10 and 14-15 of his July 25, 2017 Memorandum and Order:

## Partners' Causes of Action for Partnership Dissolution, Wind Up, and Accounting

26 V.I.C. § 75(b) and (c) provide:

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief. . . .

\* \* \* \*

. . .the term "claims" has also taken on an entirely different, and more specific meaning, by which the term "claims" refers not to the parties' respective causes of action for accounting, but rather **to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.**<sup>10</sup><sup>1</sup>

Pursuant to 26 V.I.C. § 71(a), "[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses." Thus, under the RUPA framework, **the "claims" to which the parties refer are, in fact, nothing more than the parties' respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account.**

\* \* \* \*

## Partnership Accounting Under RUPA

The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b):

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<sup>1</sup> [Footnote 10 in the original.]

It is worth noting that this type of claims resolution process would appear to be unnecessary, or at least far less complicated, in the context of many, if not most, actions for partnership accounting, as the need for such a claims resolution process is generally obviated by the existence of the type of comprehensive ledger and periodic accounting statements typically maintained by modern businesses. **Here however, as a result of the questionable and highly informal financial accounting practices of the partnership.** . . .there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely. . . .(Emphasis added.)

**Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.** In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. . . .

\* \* \* \*

**By the plain language of the statute, these individual partner accounts, are deemed to exist**, regardless of whether any such accounts are in fact maintained, and irrespective of the actual accounting practices of the partners. (Emphasis added, footnotes not included).

**Dated:** May 7, 2018



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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of May, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross** (w/ 2 Mailed Copies)  
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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).

